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IN THE

Supreme Court of the United States

October Term 1942

No. 46.

W. B. PARKER, Director of Agriculture, AGRICULTURAL PRORATE ADVISORY COMMISSION, RAISIN PRORATION ZONE NO. 1, PROGRAM COMMITTEE, W. B. PARKER, IRA REDPERN, LYMAN LANTZ, JAMES LANGFORD, MARK G. JOHNSON, C. M. BROWN, W. F. DARSIE, DR. DEAN MCHENRY, PRESTON MCKINNEY, H. C. ANDERSON, A. K. KELLY, RENALD MASTROPINI, ALEX BERG, MESROB MIRIGIAN, MELCHIOR HANSEN, A. L. DAVIDSON, W. J. CECIL and J. C. HARLAN,

Appellants,

vs.

PORTER L. BROWN,

Appellee.

SUPPLEMENTAL BRIEF FOR APPELLANTS.

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Appellants,

vs.

PORTER L. BROWN,

Appellee.

SUPPLEMENTAL BRIEF FOR APPELLANTS.

Introductory.

This cause was argued at the October Term, 1941, and subsequently on May 11, 1942, this court ordered it restored to the docket for reargument on October 12, 1942, and made the statement that:

> "In their briefs and on the oral argument counsel for the parties are requested to discuss the question

whether the state statute involved is rendered invalid by the action of Congress in passing the Sherman Act, the Agricultural Adjustment Act, as amended, or any other acts of Congress."

Inasmuch as regular briefs have heretofore been filed on the part of appellants and respondents, in the interest of brevity, we shall omit as far as possible anything appearing in our brief already filed. Reference to the opinion below, jurisdiction, and statement of the case will be found in that brief. We assume that no attack is intended upon the state statute itself but only as implemented by the particular 1940-41 Seasonal Marketing Program for Raisins here involved.

For the convenience of the court we attach a copy of the California Agricultural Prorate Act, revised to September 13, 1941, as an appendix to this brief. Sections 2, 15, 18, 18.1, 19.1, 21 and 23 were amended at the 1941 session of the State Legislature subsequent to the seasonal marketing program here involved, which became effective September 7, 1940, and expired May 31, 1941. However, none of such amendments affected any of the questions now under consideration.

The main or basic Marketing Program for Raisins, as Amended, effective July 23, 1940, is set forth in Exhibit "1" of the Statement as to Jurisdiction. The essential features (and practically all) of the 1940-41 Seasonal Marketing Program for Raisins are set forth in paragraph 13 of the Stipulation of Facts. [R. 18-19.]

Questions Presented.

We had assumed that the supplemental briefs now filed were to be confined to a consideration of the effect of Congressional action upon the seasonal program, but we are notified that the Solicitor General in his brief has attacked the program as being in violation of the Federal Interstate Commerce Clause and we are taking the liberty of replying to this. We have not found any acts of Congress pertinent other than the two specifically mentioned in the order. Therefore, the questions considered in this brief are:

1. Is the 1940-41 Seasonal Marketing Program for Raisins rendered invalid by the Federal Agricultural Adjustment Act as amended?

2. Is the 1940-41 Seasonal Marketing Program for Raisins rendered invalid by the Sherman Act?

3. Is the 1940-41 Seasonal Marketing Program for Raisins in violation of the Federal Interstate Commerce Clause?

Summary of Argument.

I.

The California 1940-41 Seasonal Marketing Program for Raisins is confined wholly to the production and handling of raw raisins before they pass into the hands of a processor. It is entirely an intrastate transaction.

Congress may invade this intrastate field and exercise its power over this matter of local concern only when and if it becomes essential to do so to protect interstate commerce in that commodity or its product.

The Agricultural Adjustment Act, as amended, authorizes the Secretary of Agriculture to occupy this field in pursuance of the administration of a designated policy when it becomes necessary to do so to protect interstate commerce.

The federal and state acts, while differing in some particulars, adopt the same economic policy of orderly regulated movement of the commodity, elimination of "gluts" with their consequent "famines," and protection of the farmer in securing a living return for his crop and relief from disastrously depressed prices resulting from unrestricted "dumping" of a crop upon a surfeited market.

The state act seeks to give the farmer the cost of production. The federal act seeks to obtain parity prices for him.

The Secretary of Agriculture has not applied the federal act to raisins and there is no showing that there is any occasion for him to do so. There is no indication that any such necessity exists as would warrant the exer-

cise of the federal commerce power over the raw raisin product to which the state program attaches.

In the absence of the exercise of such power by Congress through the Secretary of Agriculture the production and handling of the raw raisin product being a strictly intrastate matter remains wholly subject to the State control.

It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police power of the State, even when it may do so, unless its purpose to effect that result is clearly manifested. (*Savage v. Jones*, 225 U. S. 501, 537, 32 S. Ct. 715, 727, 56 L. ed. 1182 [1912]; *Allen-Bradley Local 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, 749, 62 S. Ct. 820, 825, 86 L. ed. [1942].

The State raisin program deals wholly with a local problem and would be valid even if Congress exercised its power, at least to the extent that it did not conflict with nor prevent the accomplishment of the purpose of the federal legislation.

Both federal and state acts provide for co-operation and collaboration between their respective governments in promoting the purposes of the respective statutes.

Acting under these provisions the agricultural officials of the respective governments met with each other. As a result the Commodity Credit Corporation, a federal agency, made a loan to the appellant, conditional upon the institution and maintenance of a raisin program under the California Agricultural Prorate Act. The 1940-41 Seasonal Marketing Program for Raisins was approved and in fact actually prepared and dictated by the federal

officials. The sale of the pooled raisins was completely governed by the federal officials under the express provisions of the Loan Agreement. This agreement was required to have (and had) the written approval of the Commodity Credit Corporation, the Secretary of Agriculture and the President of the United States.

Aside from all other considerations this approval by the Federal officials, acting under the Federal Act, of the State Seasonal Raisin Program removed any question of conflict between the federal act and the state program. Accordingly, the State Seasonal raisin program is not superseded nor rendered invalid by the Agricultural Adjustment Act, as amended.

II.

Ours is a dual form of government of two separate and distinct sovereignties within the same territorial limits. Each is supreme within its own sphere.

Among the powers delegated to the Federal Government by the Constitution is the power "to regulate commerce with foreign nations, and among the several states, * * *."

The Sherman Act, as an exercise of this power, prohibits contracts, combinations, conspiracies and monopolies in restraint of interstate commerce.

Such contracts, combinations, etc., are not *malum per se*. They are only prohibited when condemned by statute. A state has the inherent power to permit or create such monopolies.

While federal legislation enacted in the exercise of its commerce power is the supreme law of the land, it should never be held that Congress intends to supersede or suspend the exercise of the police powers of the States unless its purpose to do so is clearly manifested.

The Sherman Act does not manifest any such purpose. It was directed against the evils of trusts and big businesses. No intent is expressed nor manifested or to be inferred that any State was subject to its prohibitions in the proper exercise of the latter's police powers.

The California raisin program is a proper exercise of the State's police powers for the benefit and protection of the public welfare.

For over 50 years the courts and text writers have universally acclaimed that the Act has no application to a monopoly created and wholly controlled and administered by a State. Acquiescence in this without change in the Act confirms its acceptance by Congress as a correct interpretation of congressional intent.

The holding in *Georgia v. Evans*, 316 U. S. 159, that a State in its proprietary capacity may sue for treble damages under the Sherman Act as a "person," does not change the fact that such Act does not apply its prohibitions against a State.

The California raisin program, approved of and jointly controlled by federal officials under the Agricultural Administration Act, as amended, cannot be said to be so

unreasonable and to so *unduly* restrain trade as to make it a violation of the Sherman Act.

Section 17 (15 U. S. C. A. 17) of the Anti-Trust Law and section 8b (7 U. S. C. A. 608b) of the Agricultural Adjustment Act, as Amended, directly exempt the State Raisin Program from the provisions of the Sherman Act or at least declare a policy which places said program outside of the "unreasonable" restraints which the Act condemns.

The amended complaint in this action will not support an injunction for violation of the Sherman Act. There is neither allegation nor proof of irreparable damage.

III.

The California raisin program is not in violation of the federal commerce clause. It attaches prior to any movement in interstate commerce and applies to an *intra*state matter only.

The fact that California has virtually a monopoly of raw raisins in the United States does not transform the production of and other *intra*state transactions in such raw raisins into *inter*state affairs.

Heisler v. Thomas Colliery Co., 260 U. S. 245.

ARGUMENT.

Preliminary.

The Seasonal Marketing Program for Raisins here involved covered the period from September 7, 1940, to May 31, 1941.

War has already wrought such a complete change in agriculture that we must with some effort recall the pre-war conditions in the consideration of these questions. Today we are concerned with "ceilings", then it was "floors".

Then governmental economic policy as expressed in agricultural marketing regulations, proration measures, and unfair price legislation was to protect against the ruthless, cutthroat competition on the part of sellers in a time of excess supply and to protect the farmer from having to market his products at prices below the cost of production.

Today such governmental policy is concerned with protection against the effect of ruthless competition on the part of buyers in a time of excess demand and the consequent feared inflation. It is a restraint on competition in both instances.

War time demands have practically exhausted the excess stock of raisins in the hands of the packers and government purchases have served to afford the grower some measure of the same protection against the packer which the State legislation and program sought to afford.

Today the necessity for such a raisin program is not urgent, and in other fruits where similar conditions exist the state prorate programs have been lifted.

But in considering this appeal we must bear in mind that there was then a crying need for this protection to the grower of agricultural commodities and both the Federal and State legislation now under consideration were shaped to that end originally.

The repercussions from a threatened invalidation of the state program and consequent possible illegal handling of a $7,000,000.00 to $8,000,000.00 crop give this appeal importance beyond the scope of this particular action.

I.

The Federal Agricultural Adjustment Act and the California Raisin Program.

History.

The Agricultural Adjustment Act was enacted May 12, 1933,[1] and after some amendments subsequently culminated so far as marketing orders pertaining to the commodity here in question is concerned in the Agricultural Marketing Agreement Act of 1937.[2]

The California Agricultural Prorate Act was enacted June 5, 1933. It has been amended at various sessions of the State Legislature since that time, the most marked change occurring in 1939 when the administration of the act was removed from an independent commission and placed within the State Department of Agriculture.

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[1] 48 Stats. 31.

[2] 50 Stats. 246; 7 U.S.C.A. 608c.

Both the Federal and State legislation grew out of the universally distressing condition in agriculture where because of excess supply and lack of demand farmers were forced to dispose of their crops for less than the cost of production. Both had the same aim, to aid the farmer and relieve his condition, and both adopted similar economic policies or principles and took similar means to carry out their like objective.

In 1936 the *Butler* decision[3] rendered the Federal Act in its application to farmers and their production activities invalid as being an unlawful attempt to invade a field belonging exclusively to the several states.

This resulted in the Agricultural Marketing Act of 1937 limiting the powers of the Secretary of Agriculture with regard to marketing orders by providing that "Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.[4]

At this point the primary objectives of the two enactments parted company; that of the State remained the same—to relieve the distressed situation of the farmer; but in the amended Federal statute this became a means only for carrying out its primary objective, to wit, regulation and necessary protection of interstate commerce.

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[3] *United States v. Butler*, 297 U. S. 1, 56 S. Ct. 312, 80 L. Ed. 396.

[4] 7 U.S.C.A. 608c. (1).

Congress in this legislation has recognized the same distressing conditions in agriculture as are spoken of in the California Act; and has declared that the same general policy and the same general treatment of agriculture is essential for the protection of interstate commerce as the State has declared essential for the protection of the public welfare. But the Federal Act is necessarily confined to interstate commerce.[5]

It is true that the Federal Act has as its goal the achievement of parity prices for the farmer and that the State Act is more concerned with obtaining the cost of production, yet both recognize the necessity of assisting and protecting the farmer, both adopt similar economic policies and authorize the use of similar means to carry out the same. It may well be said that they complement each other, the one operating in the interstate field and the other in the intrastate field.

While the general policy and methods are the same in each Act, there are, of course, some differences. The

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[5]The Chief Justice in speaking of the Agricultural Adjustment Act, as amended, or the Agricultural Marketing Act of 1937, in *United States v. Wrightwood Dairy Co.*, 315 U. S. 110, 123, 62 S. Ct. 523, 528, 86 L. Ed. 431, said:

> "* * * (its) phraseology was deliberately chosen to conform to that adopted in the opinion in the *Schechter* case (295 U. S. 495), as signifying the full reach of the commerce power, and with the avowed purpose of conferring on the Secretary authority over intrastate products to the full extent of that power."

and

> "* * * 'the full extent of the Federal power over interstate and foreign commerce and no more is intended to be vested in the Secretary of Agriculture in connection with orders.'" (U. S. p. 124, S. Ct. pp. 528-9.)

regulation in each case is essentially an exercise of police power. The State could achieve this by a direct exercise of this power which it inherently possesses. The Congress could only act under the guise of exerting its interstate commerce power.

The State Act is much broader in the range of products covered. In the State Act its sanctions may apply to both grower and handler. The Federal statute, circumscribed again by the commerce power and recognizing that the grower is not engaged in interstate commerce, carefully directed its sanctions against the handlers only.

Nothing is more thoroughly established than that the mining and production of raw materials, the manufacturing of goods, and the growing of agricultural products are not in themselves interstate commerce. The distinction has been clearly drawn in a long line of cases from *Kidd v. Pearson* down.[6]

In the case of raisins it is only the finished processed product that moves interstate, sometimes from the packer, but more often from the jobber or wholesaler, while the production of the raw product and its sale to the packer, who, by the way, is required to function under a State processor's license, is wholly intrastate.

There is then this essential difference between the State raisin program and the Federal statute. The former is concerned wholly with the protection of the grower in the

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[6]*Kidd v. Pearson*, 128 U. S. 1, 9 St. Ct. 6, 32 L. Ed. 346; *United States v. Darby*, 312 U. S. 100, 113, 61 S. C. 451, 456, 85 L. Ed. 609.

marketing of his raw product to the packer. The latter is concerned wholly with regulation of the finished raisin product in interstate commerce and the protection of such commerce in that product.

There can be no gainsaying the fact that the bulk of the raisins produced within the State of California is shipped out of that state at some later period for final consumption outside its boundaries and that the industry within the state is dependent to a large extent for its successful existence upon this out-of-state market, while the nation at large is likewise dependent for its supply of raisins upon the State of California. This is well known to all of the industry, but no grower knows whether his particular raisins will ultimately be marketed in interstate or intrastate commerce.

This does not take the raw raisin product out of intrastate fields, for the general rule is well established that until an article actually moves in interstate or foreign commerce it remains within the local or state jurisdiction and is subject to such local or state regulation. This general rule is not altered by reason of the fact that the article involved may be specifically intended for such interstate or foreign commerce and may have been actually manufactured or produced for that specific purpose. Up until the time the commodity actually begins to move in interstate or foreign commerce it is under state control and subject to such police regulations as the public welfare may reasonably require.[1]

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[1] *Coe v. Errol* (Logs 1886), 116 U. S. 517, 6 S. Ct. 475, 29 L. Ed. 715; *Heisler v. Thomas Colliery Co.* (Coal 1922), 260 U. S. 245, 43 S. Ct. 83, 67 L. Ed. 237.

(a) FEDERAL AUTHORITY OVER INTRASTATE TRANSACTIONS AS AN ADJUNCT TO COMMERCE POWER.

The power of Congress to invade purely State fields in the protection of interstate commerce, if it exists at all, must have existed since the adoption of the Federal Constitution giving it the power to "regulate" such commerce. But it must be conceded that not until this power was applied in the National Labor Relations Board cases have the powerful Federal interstate commerce fingers clawed so deeply into the State's vitals.

The utmost extent of the application of this power is probably expressed by the bare majority opinion in the recent *Cloverleaf Butter* case[8] in the language of Mr. Justice Reed that:

> "Not only does Congressional power over interstate commerce extend * * * to interstate transactions and transportation, but it reaches back to the steps prior to transportation and has force to regulate production 'with the purpose of so transporting' the product. (Darby case, *supra*.) It extends to the intrastate activities which so affect commerce as to make regulation of them appropriate means to the attainment of a legitimate end, regulation of interstate commerce."

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[8]*Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148, 153-4, 62 S. Ct. 491, 494-5, 86 L. Ed. 486. See, also, *National Labor Relations Board v. Jones and Laughlin Steel Corp.* 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 893; *National Labor Relations Board v. Fainblatt*, 306 U. S. 601, 59 S. Ct. 668, 671, 83 L. Ed. 1014; *United States v. Darby*, 312 U. S. 100, 117, 61 S. Ct. 451, 459, 85 L. Ed. 609; *United States v. Rock Royal Co-Op.*, 307 U. S. 533, 59 S. Ct. 993, 83 L. Ed. 1446; *United States v. Wrightwood Dairy Co.*, 315 U. S. 110, 119, 62 S. Ct. 523, 526-7, 86 L. Ed. 431.

Admittedly the great bulk of the finished raisin product moves in interstate commerce and the nation receives practically all of that product from California.

Under the doctrine just enunciated it follows that if it were found *necessary* to exercise authority over the raw raisin product in order to protect national commerce in the finished product, Congress would have that power under the Federal Commerce Clause.

There is no sound reason why the same doctrine would not apply equally to production if regulation thereof were found *necessary* to protect the interstate commerce, although the majority opinion in the lower court (and other opinions) by stressing that *actual* production is *not* involved seem to infer that such Federal power does not extend to local production.

Both the Federal and State Acts under consideration in this question are directed toward orderly movement of crops and correcting the economic evils of "gluts" with their consequent "famines," in the marketing of agricultural commodities; but in the Federal Act this is only one means toward establishment of farm parity prices which is the Congressional concept for the protection of interstate commerce. On the other hand, the State Act is not concerned with parity prices but seeks to assist the farmer to obtain his cost of production in order that he may maintain his rightful position in the State and bear his just proportionate share of its burden.

Disorderly marketing which the Federal law seeks to correct in interstate commerce[9] results largely from dump-

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[9] 7 U.S.C.A. 601, 602.

ing an excess supply upon an already saturated market. This brings a ruinous low return to the grower and is usually followed by a famine in that commodity. In interstate commerce this occurs almost wholly in fresh fruits and vegetables, such as oranges, peaches, grapefruit, lemons, melons, etc.

In the case of semi-perishables, such as raisins, this is not so apt to happen, for the finished or processed product rests in the hands of packers, wholesalers, jobbers, and dealers before it enters interstate channels. These merchants are ably fitted and prepared to move such product into the market, both interstate and intrastate, in an orderly manner to meet existing demands. The evils which the Federal Act seeks to correct do not exist in the raisin industry for there is no disorderly marketing in the interstate commerce movement of the finished raisin product, and the disorderly marketing of the raw raisin product in the intrastate movement does not burden, obstruct, or affect the interstate movement of the finished product.

The State, on the other hand, does face a problem in this semi-perishable product. The raw product matures in a few short weeks out of each year and the growers through financial necessity are forced to dispose of the fruit of their year's effort immediately upon this maturity.

Consequently the many small individual growers are at the merey of the few large well organized packers who constitute the only outlet available to the grower for his raw product, with the result that the packers dictate the price to the growers.

The only relationship of this raw raisin product with interstate commerce rests upon the possibility that the State problem if not properly cared for may become so acute and the price to the grower forced so low that he will be unable to continue producing the raw raisin product. That this may occur was demonstrated in the past when that price fell below 1¢ per pound and some twenty thousand acres of vines were uprooted in Fresno County.[10]

The aim of the packers is to keep this price to the producer as low as possible without forcing the supply below the quantity sufficient to supply their demands. Generally speaking the packers have managed to do this very thing. At all times since 1937 the packers have had on hand from thirty to forty thousand tons more than they had call for either interstate or intrastate, and there has been no danger to nor any interference with the interstate supply and movement. [R. p. 17, lines 28-40; p. 137, lines 15-32.] Actually this same condition also held true for the most part prior to 1937.

When we consider that $55.00 to $60.00 per ton was a minimum cost of production[11] up until the increase in costs within the last year or so, we realize what a well calculated job the packers did in keeping the price from October, 1939, to September, 1940, before the seasonal program here in question took effect, at from $42.50 to $55.00 per ton.[12] It will be seen that this cost of production was well below the parity price which the Federal

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[10]State Horticultural Commission Report of California, '38 Fruit Growers Convention, p. 92.

[11]Appendix B, Tables 5, 6 and 7.

[12]Appendix B, Table 11.

Government was seeking to attain. Such parity prices for the same period range from $85.70 to $86.75 per ton.[13] This resulted in the raisin growers of California operating at a constant loss, not sufficient as yet to become any threat to interstate commerce in the finished raisin product, but sufficient to create a serious local problem. These growers were forced to liquidate at a loss or continue producing by operating under sub-standard living conditions with the consequent inability to pay their share of State taxes and uphold their just proportion of the burden of local government.

This presented a purely local problem which the State should have met and did meet by means of the State Act and the 1940-41 Seasonal Marketing Program for Raisins.

During the period the seasonal program was in effect (September 7, 1940, to May 31, 1941), whether through this cause or otherwise, the price to the grower just about returned his cost of production ranging from $55.00 to $60.00 per ton. The entire amount of pooled raisins were disposed of by August of 1941 at an average price of $60.51 per ton.

Since that time lend lease purchases have brought these prices up until now the Federal Government has taken over the entire 1942 crop at a price of $110.00 per ton to the grower for Thompson seedless raisins.

We do not believe it can be successfully argued that the production of raw raisins and the sale of them by the grower to the packer for processing within the State is not ordinarily a purely local transaction and subject to

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[13]Appendix B, Tables 8, 9 and 10.

the authority of the State and not to that of the Federal Government.[14]

> "With respect to the federal power to protect interstate commerce in the commodities produced, there is obviously no difference between coal mined, or stone quarried, and fruit and vegetables grown." (*Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, 303 U. S. 453, 465, 58 S. Ct. 656, 660, 82 L. Ed. 954.)

It is our position that the raisin industry in California is primarily a local activity. The production of the raw raisins, their handling and delivery to the packer, the processing or preparation of the raw raisin product into the finished product by the packers under State processing licenses, is purely local and all of such transactions, together with sales and deliveries from the packers to wholesalers and jobbers within the State, are subject to State control, regulation, and taxation. The raisins do not ordinarily pass from under this State control until they actually begin their movement in interstate commerce.

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[14] *Kidd v. Pearson*, 128 U. S. 1, 20-1, 9 S. Ct. 6, 32 L. Ed. 346; *United Mine Workers v. Coronado Co.*, 259 U. S. 344, 407-8, 42 S. Ct. 570, 581-2, 66 L. Ed. 975; *Oliver Iron Co. v. Lord*, 262 U. S. 172, 178, 43 S. Ct. 526, 529, 67 L. Ed. 929; *United Leather Workers, etc. v. Herkert & Meisel Trunk Co.*, 265 U. S. 457, 465, 44 S. Ct. 623, 625, 68 L. Ed. 1104; *Industrial Association v. United States*, 268 U. S. 64, 82, 45 S. Ct. 403, 407, 69 L. Ed. 849; *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 310, 45 S. Ct. 551, 556, 69 L. Ed. 963; *Schechter Corp. v. United States*, 295 U. S. 495, 547, 55 S. Ct. 837, 850, 79 L. Ed. 1570; *United States v. Butler*, 296 U. S. 1, 75-6, 56 S. Ct. 312, 323, 80 L. Ed. 477; *Chassaniol v. City of Greenwood*, 291 U. S. 584, 587, 54 S. Ct. 541, 542, 78 L. Ed. 1004; *Milk Control Board v. Eisenberg Farm Products*, 306 U. S. 346, 352, 59 S. Ct. 528, 531, 83 L. Ed. 752.

Even then they may be still subject to some State control provided the latter does not hinder, obstruct, nor burden such commerce and does not discriminate against the same.

On the other hand, we recognize that because the bulk of the finished raisin product moves in interstate commerce and because of the relationship existing between the production of the raw raisin product and the finished product that Congress may exercise control over this production of the raw product if it becomes *essential* and *necessary* for it to do so in order to protect the interstate commerce in the finished raisin product.

If, however, our reasoning is correct that this power of Congress over the raw raisin crop comes into being only when and if it is *essential and necessary* to exercise the same in order to protect the interstate commerce, then under the record in this case such Federal authority does not exist and did not exist at any time during the life of the 1940-41 Seasonal Marketing Program for Raisins.

The record here fails to show any unusual incident in the interstate transaction in the finished raisin product during the time the State program was in effect. (Appendix B.) There is absolutely nothing in the record upon the movement or prices of the finished raisin product in interstate commerce. The record does show affirmatively that there was no interference with the interstate supply. At all times there was an excess of raisins on hand to satisfy the utmost in interstate demand.

As far as the raisins here involved were concerned, the Federal Government, through the Secretary of Agriculture, had not seen fit to act, and we think rightfully so, because the contingency bringing the Federal commerce

power into being over the raw raisin product did not exist. Due to natural conditions or to adequate State action that contingency may never arise.

Conceding the potentiality of the Federal commerce power over the raw raisin product, that power may always remain potential and never blossom into actual being.

We may remark that after this raw raisin product is received from the grower by the packer the latter processes or prepares them for market under the regulation of a State processor's license, and this subsequent State control remains unquestioned.

(b) Validity of Raisin Program in Event of Possible Federal Order.

We do not believe that the fact that a Federal order applicable to raisins had been made under the Federal Act would in itself necessarily invalidate the State program.

Bearing in mind that the State Act is to correct agricultural evils, whereas, the object of the Federal Act is to protect interstate commerce, they could well exist side by side if there were no actual conflict.

A Federal order might bear only upon the finished raisin product. Assuming a Federal order properly in effect, obviously no State program could exist in conflict with the same.

However, we are not faced with that question at this time for no Federal order has been made. On the contrary, the Federal Government has approved the State program here under consideration.

(c) Effect of Federal Agricultural Legislation in Absence of Action Thereunder.

No order with respect to raisins is in effect under the Agricultural Adjustment Act, as amended. The Secretary of Agriculture has not seen fit to make any order applicable to the finished raisin product moving in interstate commerce. Likewise, either through lack of authority or because he felt there was no occasion therefor, and we think both, he has not made any order relative to the raw raisin product in the intrastate field.

Assuming that the Secretary of Agriculture may allot the amount of raw raisins which the packers may purchase from producers, the fact remains that he has *not* done so.

We do not anticipate that it will be seriously urged that the mere enactment of the Agricultural Marketing Agreement Act of 1937 of itself immediately placed all of the agricultural commodities included thereunder within the exclusive control of the Federal commerce power from the planting to the ultimate consumption of such commodities.

Even if it be assumed, for the sake of argument only, that the raw raisin product was definitely under the Federal commerce power, we believe that a Federal marketing order would have to be made, and one that was in conflict with the State seasonal marketing program for raisins, before the latter would be adversely affected.

It is well recognized that the State may exercise its regulatory powers over local matters directly affecting

interstate commerce until Congress exercises its authority upon the subject. This has been applied where the regulation itself directly affects such commerce and not merely where the subject regulated might possibly affect such interstate commerce as in the present instance.[15]

This court has more than once most emphatically declared that "the principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.' ". (*Kelly v. Washington*, 302 U. S. 1, 10, 58 S. Ct. 87, 92, 82 L. Ed. 3, 10-11 (1937).) "It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police power of the State, even when it may do so, unless its purpose to effect that result is clearly manifested."[16]

This is not one of those instances where the regulation bears *per se* directly upon interstate commerce, such as

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[15] *Minnesota Rate Cases*, 230 U. S. 352, 33 S. Ct. 729, 57 L. Ed. 1511 (1913); *Sligh. v. Kirkwood*, 237 U. S. 52, 35 S. Ct. 501, 59 L. Ed. 835 (1915); *Detwiler v. Welch*, 46 Fed. (2d) 75 (9 C.C.A. 1930); *Clason v. Indiana*, 306 U. S. 439, 59 S. Ct. 609, 83 L. Ed. 858 (1939).

[16] *Savage v. Jones*, 225 U. S. 501, 537, 32 S. Ct. 715, 727, 56 L. Ed. 1182 (1912); *Welch v. New Hampshire*, 306 U. S. 79, 84-5, 59 S. Ct. 438, 441, 83 L. Ed. 500 (1939); *Maurer v. Hamilton*, 309 U. S. 598, 614, 60 S. Ct. 726, 734, 84 L. Ed. 969 (1940); *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, 749, 62 S. Ct. 820, 825, 86 L. Ed. ..... (1942).

quarantine, inspection, railroad, highway, and shipping laws. Even in these instances, and where Congress has acted, the State is left free to act upon such phases that are left untouched by the Federal regulation and are not in conflict therewith.[17]

Here, however, the object of the regulation is purely intrastate, although bearing such relationship to interstate commerce in the finished product as to make it subject to Congressional regulation in the event that such Federal action is necessary to protett the commerce power. Under such conditions we know of no instance in which the State has been deprived of its power over such intrastate fields unless and until Congress has found it necessary to act and has actually acted in a manner hostile to or directly in conflict with the State regulation.

When Federal regulation is actually effected in a proper case State control must yield to it, although both may still continue if there is no conflict or inconsistency in the two.

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[17] *Merchants Exchange v. Missouri*, 248 U. S. 365, 368, 39 S. Ct. 114, 63 L. ed. 300 (warehousing, 1919); *Northwestern Bell Tel. Co. v. Nebraska*, 297 U. S. 471, 479, 56 S. Ct. 536, 80 L. ed. 810 (telephone depreciation, 1936); *Kelly v. Washington, supra* (inspection of hulls); *Welch v. New Hampshire*, 306 U. S. 79, 59 S. Ct. 438, 83 L. ed. 500 (maximum hours for drivers, 1939); *Eicholz v. Public Service Comm.*, 306 U. S. 268, 59 S. Ct. 532, 83 L. ed. 641 (interstate carrier permit, 1939); *Maurer v. Hamilton*, 309 U. S. 598, 60 S. Ct. 726, 84 L. ed. 969 (load size and weight, 1940).

Many instances may be found where Federal regulation has been held to exclude State regulation deemed to be inconsistent or in conflict therewith.[18]

On the other hand, numerous instances appear in which Federal action has not invalidated the State regulation.[19]

In practically all of the cases in which Federal action excluded State control, it will be found that Congress had definitely occupied the field, that the State regulation could not be reconciled with the Federal authority, and that the State regulation bore directly upon interstate commerce.

In the language of this court, "There can be no one crystal clear distinctly marked formula" (*Hines v. Davidowitz, supra*, U. S. p. 6., S. Ct. p. 404), to de-

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[18] *Oregon-Washington Railroad Co. v. Washington*, 270 U. S. 87, 46 S. Ct. 279, 70 L. ed. 482 (plant quarantine, 1926); *McDermott v. Wisconsin*, 228 U. S. 115, 33 S. Ct. 431, 57 L. ed. 754 (labeling glucose, 1913); *Adams Express Co. v. Croninger*, 226 U. S. 491, 505, 33 S. Ct. 148, 57 L. ed. 314 (carrier liability, 1912); *New York Central v. Winfield*, 244 U. S. 147, 37 S. Ct. 546, 61 L. ed. 1045 (workmen's compensation, 1916); *Napier v. Atlantic Coast Line Railroad Co.*, 272 U. S. 605, 47 S. Ct. 207, 71 L. ed. 432 (locomotive boiler and safety devices, 1926); *Missouri Pacific v. Porter*, 273 U. S. 341, 345, 47 S. Ct. 383, 71 L. ed. 672 (interstate bill of lading, 1927); *Hines v. Davidowitz*, 312 U. S. 52, 66, 61 S. Ct. 399, 85 L. ed. 581 (alien registration, 1941); *Illinois Natural Gas Co. v. Central Illinois Public Service Co.*, 314 U. S. 498, 509, 62 S. Ct. 384, 86 L. ed. 322 (gas facilities, 1942); *Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148, 62 S. Ct. 491, 86 L. ed. 486, (renovated butter, 1942).

[19] *Savage v. Jones*, 225 U. S. 501, 32 S. Ct. 715, 56 L. ed. 118 (labeling commercial feed stuff, 1912); *Mintz v. Baldwin*, 289 U. S. 341, 346, 53 S. Ct. 611, 77 L. ed. 1245 (cattle quarantine, 1933); *Kelly v. Washington*, 302 U. S. 1, 10, 58 S. Ct. 87, 82 L. ed. 3 (inspection of ship hulls, 1937); *Maurer v. Hamilton*, 309 U. S. 598, 60 S. Ct. 726, 84 L. ed. 969 (load size and weight for trucks, 1940); *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, 62 S. Ct. 820, 86 L. ed. (labor relations, 1942).

termine this question, but all are agreed (witness the majority and dissenting opinion, *Hines v. Davidowitz, supra, Cloverleaf Butter Co. v. Patterson, supra*), that a valid exercise by the State of its police power is superseded by Federal legislation *only* where the repugnance or conflict is so direct and positive that the two acts cannot be fairly reconciled or consistently stand together, and this is not to be accomplished by implication nor to be inferred from the mere fact that Congress has seen fit to occupy the field, but the Federal action fairly interpreted must show a repugnance or conflict with the State Act so direct and positive that the two could not be reconciled or consistently stand together.

We turn then to the Federal statute to see whether there is this direct and positive repugnance or conflict between it and the State raisin program and whether or not there is expressed in the Federal legislation by fair interpretation thereof a clear intent to supersede the exercise by the State of its police power over the production and handling of raisins in purely intrastate transactions.

The State raisin program as we have seen deals wholly with a purely local problem and seeks to insure the farmer the cost of his production by affording him a means for the orderly handling of his raw raisin product which makes it unnecessary to dump his entire year's crop on the market within the few short weeks of the maturity thereof. This saves him from the price depressing tactics exerted by the few organized packers who are his only outlet.

The Federal legislation declares that the condition it deals with is the "disruption of the orderly exchange of commodities in interstate commerce." (7 U. S. C. A.

601.) It declares that the policy of Congress is "to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish" certain parity prices and to protect the interest of the consumer by approaching this level by gradual correction at as rapid a rate as feasible. (7 U. S. C. A. 602.)

Administration of this Federal legislation is entrusted to the Secretary of Agriculture, who is authorized to issue orders with respect to certain agricultural commodities when he has determined, after hearing for that purpose, that such order will tend to effectuate the declared policy of the legislation with respect to the commodity under consideration. It is expressly provided that "Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof." (7 U. S. C. A. 608c.)

Section 8c(6) and (7) provide that any Federal order issued may provide for the limitation of the total quantity of the commodity, or of any grade, size or quality thereof, the allotment of the amount which each handler may purchase from or handle on behalf of any and all producers, the amount which each handler may market in or transport to a market in the current of interstate or foreign commerce, the extent of the surplus of any such commodity, and the control and disposition thereof, the establishment of pools, the prohibition of unfair methods of competition and unfair trade practices in the handling of the commodity, etc.

These provisions are very similar, although not as broad, as the ones provided for under the State Act in Sections 19 and 19.1 thereof.

The application of the Federal Act is limited to milk, fruit, tobacco, vegetables, soy beans, hops, honey bees, naval stores, and the products thereof. (Section 8c(2).)

The State Act has a somewhat wider scope, being applicable to any variety or kind of agricultural commodity (Section 8); and "commodity" is defined to mean any horticultural, viticultural, or vegetable product of the soil, live stock and live stock products and poultry and poultry products, but excluding milk or milk products. (Section 2(c).)

There is no definite statement in the Federal statute, nor in its legislative history, clearly expressing any Congressional intent that the enactment of such legislation in the absence of the issuance of an order thereunder precludes State regulation.

By the mere enactment of this statute, Congress can hardly be held to have intended to thereby exclude from State control all milk, fruit, tobacco, vegetables, soy beans, hops, honey bees, naval stores, and the products thereof, and this is equally true even if confined to such commodities or the products thereof as move in a substantial amount in interstate commerce. How, and in what way, and to what extent, if any, does the State raisin program "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress?" (*Hines v. Davidowitz, supra.*) It is only "if the purpose of the (Federal) Act cannot otherwise be accomplished—if its operation within its chosen field must be frustrated and its provisions be refused their natural effect" that the State

regulation must yield to the regulation of Congress within the sphere of its delegated power. (*Savage v. Jones, supra*, U. S. p. 533, S. Ct. p. 726.)

No Federal order pertaining to raisins is possible until the Secretary of Agriculture, after a hearing, shall find upon evidence introduced thereat that the issuance of an order pertaining to raisins will tend to effectuate the declared policy of the Act, which is to establish and maintain such orderly marketing conditions in interstate commerce as will establish parity prices to the producer.

It is possible, and we think probable, that in the case of the raw raisin product such occasion will never arise. It is inconceivable to think that Congress ever intended that in such event the raw raisin product should go entirely unregulated and that the State should be excluded from affording any protection to the raisin grower from the packer.

The very fact that the Federal Act (Section 10(i)) specifically provides that the Secretary of Agriculture—"in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, * * * and if authorized to cooperate with such authorities; * * * to issue orders * * * complementary to orders or other regulations issued by such authorities"—in itself declares the express intent of Congress that State marketing programs covering the commodities included within the Federal statute shall not only exist, but that they may exist side by side with Federal orders issued under such statute. The State Act, Section 19(b), likewise provides for collaboration and cooperation with any other State

or with the United States in the formulation and execution of a common marketing program.

This court in discussing a similar question[20] commented upon the case of *Reid v. Colorado*, 187 U. S. 137, 23 S. Ct. 92, 47 L. Ed. 108, wherein State regulation was held not to be excluded by the Federal Act and called attention to the fact that such Act expressly made reference to co-operation with State authorities.

In the present instance the Federal and State officials have acted under these respective cooperative provisions. The Solicitor General in his brief has set forth these cooperative steps very accurately and fully and we need not repeat them here. It is sufficient to say that the State 1940-41 Seasonal Marketing Program for Raisins was not only approved but was in fact actually prepared and dictated by the Federal officials. A loan was made by the Commodity Credit Corporation conditioned upon the institution of the State raisin program. The sale of the pooled raisins was completely governed by the Federal officials under the express provisions of the Loan Agreement. This was required to have (and had) the written approval of the Commodity Credit Corporation, the Secretary of Agriculture and the President of the United States.[21]

The *Tobacco* cases illustrate the question before us quite clearly. We feel that they strongly support the validity of the California Raisin Program.

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[20] *Oregon-Washington Railroad etc. v. State of Washington*, 270 U. S. 87, 101, 46 S. Ct. 279, 283, 70 L. ed. 482 (1926).

[21] Brief on Behalf of Appellants, p. 14; certified copy of Approval filed with Court.

In *Townsend v. Yeomans*,[22] the Court had before it a Georgia statute enacted in 1935 fixing maximum charges for handling and selling leaf tobacco in the auctions at the tobacco warehouses.

In *Currin v. Wallace*,[23] this Court was called upon to determine the validity of the Federal Tobacco Inspection Act passed in the same year. That Act purported to regulate the same tobacco auctions involved in the *Yeomans* case by requiring inspection and certification of all tobacco before it could be offered for sale.

The tobacco statutes present a much greater degree of conflict and the Georgia statute impinges much more directly upon interstate commerce than is the case with the California Raisin Program. There was no question between a raw and a finished product in the *Tobacco* cases as there is with raisins. The tobacco was not held within the State of Georgia for indefinite periods after the auction nor was it processed or prepared for market as raisins are before they leave the state. The tobacco was shipped out of the State immediately after the auction sale instead of being held for periods up to two years as is done with raisins. 100% of the Georgia tobacco was shipped out of the state, as against 90% to 95% of the finished raisin product shipped out of the State and which probably constitutes less than 75% of the raw raisin crop.

In the *Townsend* case, the Court speaking of the effect of the Federal Act in response to the same attack made upon the State Act as is here made upon the California program said that "If it be assumed that Congress has

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[22] 301 U. S. 441, 57 S. Ct. 842, 81 L. ed. 1210 (1937).

[23] 306 U. S. 1, 59 S. Ct. 379, 83 L. ed. 441 (1939).

that authority, it has not been exercised and in the absence of such exercise the State may impose the regulation in question for the protection of its people."[24] So in the instant case if there is authority under the Agricultural Adjustment Act, as amended, to regulate raisins, it has not been exercised, and accordingly California may impose its regulation until superseded by Federal action.

In the *Currin* case the Court upheld the validity of the Federal law and concluded that it had no need to change its views expressed in the *Townsend* case and that the Federal and State statutes were not necessarily in conflict.

Continuing in the *Townsend* case the Court said:[25]

> "It is inconceivable that the Congress in endeavoring to aid the tobacco growers in sorting or 'grading,' and thus to facilitate the marketing of their tobacco, intended to deprive them of the protection they already had against the extortionate charges of the warehousemen upon whom they depended in making their sales. Instead of frustrating the operation of such state laws, the provisions of the act expressly afforded and emphasized the opportunity for cooperation with the states in protecting the farmers' interests."

The Agricultural Adjustment Act, as amended, contains like provisions for cooperation with the states in protecting the farmers' interests by means of these similar orders. We may well say in the present instance that it is inconceivable that the Congress in endeavoring to aid

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[24] *Townsend v. Yeomans, supra*, U. S. p. 452, S. Ct. p. 847.

[25] U. S. p. 454, S. Ct. p. 848.

the farmers in the orderly marketing of their (raisins) intended to deprive them of the protection they already had against the ruinous prices paid by the packers upon whom they depended in making their sales. Instead of frustrating the operation of such State regulation, the provisions of the Act expressly afford and emphasize the opportunity for cooperation with the states in protecting the farmers' interests.

It seems incredible that a Federal Act merely authorizing administrative action over agricultural commodities moving in interstate commerce in the event of certain contingencies can thereby be said to have exclusively occupied the field as to all of such commodities in the absence of any such administrative action and to the extent that all State regulation is excluded.

We believe it is clear that there can be no conflict between the Agricultural Adjustment Act, as amended, and the California Raisin Program unless and until the Secretary of Agriculture issues a marketing order covering raisins. However, any possibility of doubt on this question is removed in the present instance by the fact that the Secretary of Agriculture, acting under the provisions of the Federal law, affirmatively approved the California 1940-41 Seasonal Marketing Programs for Raisins. He not only approved it, but, together with other Federal officials and agencies, prepared and dictated its terms and supervised the handling and disposal of the pooled raisins.

No question of State and Federal conflict ought now be allowed to enter this case, for it presents a splendid example of the co-operation which should be the ultimate aim in our dual system of government.

II.

The Sherman Anti-Trust Law and the California Raisin Program.

Whether the California Agricultural Prorate Act as applied through the 1940-41 Seasonal Marketing Program for Raisins is rendered invalid by the action of Congress in passing the Sherman Act, a query raised by the Court and not by respondent, may be divided into three questions:

1. Is a State subject to the inhibition of the Sherman Act?
2. If so, does the raisin program in question violate the provisions of that Act? and
3. If so, may such program be enjoined in the present action?

A negative answer to any one of these three queries is fatal to a successful attack upon the raisin program by means of the Sherman Act in this proceeding.

1. Is a State Subject to the Sherman Act?

In considering this question it is probably well to remember that we are not dealing with inferior political subdivisions of a central government but with sister sovereignties, each supreme in her own field.

The reservation to the States respectively by the Tenth Amendment[28] only means the reservation of the rights of

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[28] *Tenth Amendment United States Constitution*: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

sovereignty which they respectively possessed before the adoption of the Constitution of the United States and which they had not parted from by that instrument.[27]

The general government and the States, though both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, as expressed by the Tenth Amendment, "reserved," should be as independent of the general government as that government within its sphere is independent of the States. (*Buffington v. Day*, 78 U. S. (11 Wal.) 113, 124, 20 L. Ed. 122.)

While the complexities of present day civilization have resulted in considerable Federal infiltration into the very heart of local State activities, still we are reassured by this Court's recent pronouncements.

Ours is a dual form of government. In every State there are two governments, the State and the United States. Each State has all the governmental powers save such as the people by their Constitution have conferred upon the United States, denied to the States, or reserved to themselves. The Federal Union is a government of delegated powers having only such as are expressly conferred upon it or may be reasonably implied from those granted.[28]

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[27] *Gordon v. U. S.*, 117 U. S. 697, 705, 29 L. ed. 136; *U. S. v. Williams*, 194 U. S. 295, 24 S. Ct. 719, 48 L. ed. 979.

[28] *U. S. v. Butler*, 297 U. S. 1, 63, 56 S. Ct. 312, 318, 80 L. ed. 477 (1935).

Although the decision has been limited by later pronouncement, it is well to pause and reflect upon the language of the late Mr. Justice Sutherland:[28½]

> "Every journey to a forbidden end begins with the first step; and the danger of such a step by the Federal Government in the direction of taking over the powers of the States is that the end of the journey may find the States so despoiled of their powers, or—what may amount to the same thing—so relieved of the responsibilities which possession of the powers necessarily enjoined, as to reduce them to little more than geographical subdivisions of the national domain."

In extending the Federal commerce power under the National Labor Relations Board cases this Court took pains to point out that the authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce "among the several states" and the internal concerns of a State That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system.[29]

The subject of Federal power is still "commerce,"—not all commerce, but commerce with foreign nations and among the several states. The expansion of enterprise has vastly increased the interests of interstate commerce, but

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[28½] *Carter v. Carter Coal Co.*, 298 U. S. 238, 295-6, 56 S. Ct. 855, 866, 80 L. Ed. 1160 (1936).

[29] *National Labor Relations Board v. Jones and Laughlin*, 301 U. S. 1, 30, 57 S. Ct. 615, 621, 81 L. ed. 893 (1937).

the constitutional differentiation still obtains. Activities local in their immediacy do not become interstate and national because of distant repercussions.[30]

However, this dual sovereignty does not afford either government the right to thwart the proper exercise of the powers of the other in the field in which the other is supreme. Clause 2 of Article VI of the Federal Constitution makes that Constitution and the laws of the United States which shall be made in pursuance thereof the supreme law of the land, anything in the laws of any State to the contrary notwithstanding. It is clear that no State by reason of its sovereignty may *override* the restriction of a valid law enacted by Congress pursuant to the Constitution.[31]

What we have already said in discussing the Agricultural Adjustment Act, as amended (*supra*, pp. 23-34), is applicable here. The authorities gathered there voice the reiterated and emphatic pronouncement of this Court that it should never be held that Congress intends to supersede or suspend the exercise of the police powers of the States unless its purpose to effect that result is clearly manifested. Such an intent should be even more clear

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[30] *Schechter Poultry Corp. v. U. S.*, 295 U. S. 495, 546, 554, 55 S. Ct. 837, 850, 853, 79 L. ed. 1570 (1934); *Santa Cruz Packing Co. v. National Labor Relations Board*, 303 U. S. 453, 466, 58 S. Ct. 656, 660, 82 L. ed. 954 (1938).

[31] *Northern Securities Co. v. U. S.*, 193 U. S. 197, 332, 24 S. Ct. 436, 455, 48 L. ed. 679 (1904); *Board of Trustees University of Illinois v. United States*, 289 U. S. 48, 57, 53 S. Ct. 509, 510, 77 L. ed. 1025 (1932).

and express when it serves not only to suspend the police powers, but to subject the sovereignty of the State to the inhibition and penalties of Congressional action. "These principles have guided judicial decisions for more than a century. Clearly they not only are inevitable corollaries of the constitutional provision but their unimpaired enforcement is of the highest importance to the continued existence of our dual form of government." (*Milk Control Board v. Eisenberg Farm Products*, 306 U. S. 346, 351, 352, 59 S. Ct. 528, 530-31, 83 L. Ed. 752 (1939).)

A State has never to our knowledge been held subject to the inhibitions of the Sherman Act when acting in the direct administration of its police powers. Practically all text writers agree that the prohibition of the statute extends only to those monopolies created by persons or corporations and has no application to a monopoly created and wholly controlled by a State, which is a sovereign having no derivative powers and not a person or corporation.[32]

While not specifically involving an attack under the Sherman Act, it has been generally held that the doctrine of "monopoly" does not apply to business conducted by the State in the exercise of its governmental function, such as the exclusive control of the traffic in intoxicating liquor. *"The doctrine of 'monopoly' cannot be applied to*

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[32]41 *Cor. Jur.* 112; 19 *R. C. L.* 56, Sec. 31; 36 *Am. Jur.* 630, Sec. 162; *Thornton Combinations in Restraint of Trade*, p. 536; 20 *Am. & Eng. Encyc. of Law* 861; *Curtis, Manual of the Sherman Law*, p. 191, Sec. 406; *Joyce on Monopolies*, pp. 200-1, Sec. 165.

a state in exercising governmental functions."[33] (Emphasis added.)

To the same effect see *Utah Manufacturers Association v. Stewart*, 82 Utah 198, 23 Pac. (2d) 229.

In 1895 the State of South Carolina passed an act forbidding the manufacture or sale of intoxicating liquors as a beverage within the limits of the State by any private individual and vesting the right to manufacture and sell all such liquors in the State exclusively through certain designated officers and agents. A citizen of North Carolina shipped a barrel of whiskey to a customer in South Carolina which was seized by the State officials as in violation of the statute and thereupon he brought an action for treble damages under the Sherman Anti-Trust Act; and this question was presented squarely to the United States Circuit Court.

The Court said[34] that it was impossible after examination of the State Act "to avoid the conclusion that it declares in the state the monopoly in the purchase and sale of alcoholic liquors. Not only so, but it protects this

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[33] *State v. Aiken* (1894), 42 So. Car. 222, 20 S. E. 221, 228, 26 L. R. A. 345; and cases collected in Annotation 121 A. L. R. 303. Considering a similar liquor statute in North Carolina the court, in *Guy v. Cumberland County*, 122 N. C. 471, 29 S. E. 771, 772, said, quoting from the dissenting opinion of Mr. Justice Brown in *Scott v. Donald*, 165 U. S. 58, 104, 17 Sup. Ct. 274:

> "Granting that the act gives the State itself a monopoly of all traffic in such liquors, it is not a monopoly in the ordinary or odious sense of the term, where one individual or corporation is given the right to manufacture or trade which is not open to others, but a monopoly for the benefit of the whole people of the State, the profits of which, if any, are enjoyed by the whole people; in short, a monopoly in the same sense in which the Post Office Department and the right to carry the mails is a monopoly of the Federal Government."

[34] *Lowenstein v. Evans*, 69 Fed. Rep. 908, 910.

monopoly in the state in every way possible and by the most drastic methods." It was pointed out that the Act does not create in nor give to any individuals the monopoly but "gives it wholly and entirely to the state."

There, as here, the control was vested exclusively in the State and not in any individuals. There, the State exercised complete control over 100% of the liquor; here, it exercises control over 70% of the raw raisins. There, the State exercised exclusive control over the price; here, control over the price was actually exercised by the Federal Government. The question to be determined here is the same as stated by the Court there,—"whether, in declaring and asserting this monopoly in herself, and in assuming and controlling its enforcement, the state comes within the provisions of the act of congress of 1890." It was held that the State was not object to the Sherman Act.[35]

We find only one instance in which this question has been presented to this Court. That was in 1904 in a case involving pilotage laws of the State of Texas providing for the State licensing and appointment of pilots in the

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[35] *Lowenstein v. Evans, supra*, p. 911: "But by this act the state makes no contract, enters into no combination or conspiracy. She declares and asserts in herself the monopoly in the purchase and sale of liquors. The section of the act of 1890, sued upon, gives a right of action for any injury by any other person or corporation. The state is not a corporation. A corporation is a creature of the sovereign power, deriving its life from its creator. The state is a sovereign having no derivative powers, exercising its sovereignty by divine right. The state gets none of its powers from the general government. * * * Nor can it be said that the state is a person in the sense of this act. Even were this the case, as the monopoly now complained of is that of the state, no relief can be had without making the state a party, and this destroys the jurisdiction of this court."

ports of that State, and prohibiting any other person from acting as such a pilot.[36]

Among other attacks made upon the State regulation, the contention was made that "the commissioned pilots have a monopoly of the business, and by combination among themselves exclude all others from rendering pilotage services, * * *." In considering the application of the anti-trust laws this Court held that "if the State has the power to regulate, and in so doing to appoint and commission, those who are to perform pilotage services, it must follow that no monopoly or combination in a legal sense can arise from the fact that the duly authorized agents of the State are alone allowed to perform the duties devolving upon them by law." True, the type or character of monopoly in that case and the present instance are quite dissimilar but the effect there upon interstate commerce was much more direct than in the present instance. It would seem that the principle announced there "that no monopoly or combination in a legal sense can arise from the fact that the duly authorized agents of the State are alone allowed to perform the duties devolving upon them by law" would apply equally here and that no monopoly or combination in a legal sense can arise here from the fact that the duly authorized officials of the State (or the State) are alone allowed to perform the duties devolving upon them by law or to exercise the powers conferred.

Since the time these decisions and the statements of the text writers appeared, this Court has recently held that the United States is not a "person" (*U. S. v. Cooper*

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[36]*Olsen v. Smith*, 195 U. S. 332, 25 S. Ct. 52, 55, 49 L. ed. 224.

Corp., 312 U. S. 600, 61 S. Ct. 742, 85 L. Ed. 1071 (1941)), but that a State is such a "person" (*Georgia v. Evans*, 316 U. S. 159, 62 S. Ct. 972, 86 L. Ed. ..... (1942)), within the meaning of the Sherman Act.

In both of these actions the United States and the State of Georgia, respectively, brought the proceedings to recover treble damages under Section 15 of the Sherman Anti-Trust Act. The only question in the two cases was whether by the use of the phrase, "any person," Congress intended to confer upon the United States and any State, respectively, the right to maintain an action for treble damages against a violator of the Act. The opposite results reached in the two cases could only be arrived at by disregarding the strict confines of literal interpretation of the language of the statute and by giving full scope to every possible aid in determining Congress' true intent.

In the *Cooper* case the Court recognizes that "In common usage the term 'person' does not include the sovereign" and that "statutes employing the phrase are ordinarily construed to exclude it." This principle, equally applicable to the sovereignty of the State, was not referred to in the *Georgia* case. Both cases recognize that there is no hard and fast rule, but that "the purpose, the subject matter, the context, the legislative history, and the executive interpretation of the statute are aids to construction which may indicate an intent, by the use of the term, to bring state or nation within the scope of the law."[37]

The *Cooper* case recognized that the use of the phrase, "any person," is in itself insufficient to include the govern-

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[37] *U. S. v. Cooper Corp., supra*, U. S. pp. 604-5, S. Ct. pp. 743-4; *Georgia v. Evans, supra*, S. Ct. p. 974.

ment, and states that this conclusion is supported by the fact that if the purpose was to include the United States the ordinary dignities of speech would have led to its mention by name. This conclusion should hold equally true in its application to a sister sovereignty, such as a State, especially when it comes to the imposition of civil and criminal penalties. The interpretation resulting in the respective conclusions in the two cases was then drawn from the "structure of the act, its legislative history, the practice under it, and past judicial expressions."[38]

In the *Cooper* case, in addition to the fact "that the text of the act, taken in its natural and ordinary sense, makes against the extension of the term 'person' to include the United States,"[39] the controlling factor in deducing the intent of Congress seems to have been that by the terms of the Act the United States is given the exclusive right to prosecute violations criminally (15 U. S. C. A. 3) and by forfeiture and seizure (15 U. S. C. A. 6) and by injunction (15 U. S. C. A. 4), which latter right was also exclusive until the amendment by the Clayton Act (15 U. S. C. A. 26)

In the *Georgia* case, as stated by the Court, "the considerations which led to this construction are entirely lacking here. The State of Georgia, unlike the United States, cannot prosecute violations of the Sherman law. Nor can it seize property transported in defiance of it"[40]

The decision in the *Georgia* case is quite plainly based upon the ground that there is "no reason for believing

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[38]*Georgia v. Evans, supra*, S. Ct. p. 973.

[39]*U. S. v. Cooper Corp., supra*, U. S. 614, S. Ct. 748.

[40]*Georgia v. Evans, supra*, S. Ct. 974.

that Congress wanted to deprive a State, as purchaser of commodities shipped in interstate commerce, of the civil remedy of treble damages which is available to other purchasers who suffer through violation of the Act" and the fact that "such a construction would deny all redress to a state, when mulcted by a violator of the Sherman Law, merely because it is a State."[41]

In each case it is pointed out as a corollary that if a State may bring an action as plaintiff it is likewise subject to the penalties of the Act as a defendant. The opinion in the *Cooper* case says:[42] "It is hardly credible that Congress used the term 'person' in different senses in the same sentence. Yet, unless it did, the United States would not only be entitled to sue but would be liable to suit for treble damages." The dissenting opinion[43] in the *Cooper* case points out that "That question is not before us and need not be decided. Other principles will be material if such a question ever should be presented."

It is apparent that none of the reasons motivating the conclusion reached by the Court in the *Georgia* case are present in considering whether a State is subject to the inhibitions of the Sherman Act and can be sued for violation thereof. Admittedly, if we look solely to the phrase of the statute, "any person", it should apply equally to a State in the one instance as in the other. However, in the light of these decisions, if we look solely to that phrase it would not apply to State or Federal government in either instance.

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[41] *Ibid.*

[42] *U. S. v. Cooper Corp., supra*, U. S. p. 606, S. Ct. p. 744.

[43] U. S. p. 619, S. Ct. p. 750, note 5.

We may assume that Congress in the proper exercise of its constitutional powers may make such legislation directly applicable to a State by express provision to that effect.

In determining, however, whether a State is subject to the provisions of the Sherman Act or the inhibitions thereof, we start from the premise that no such express provision or intention appears in the statute itself. We next have the principle that the phrase "any person" including "corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country" (15 U. S. C. A. 7) is ordinarily construed to exclude a sovereign government.[44]

Ordinary respect for the sovereignty of the State should, and we think undoubtedly would, lead Congress, in those instances where it possessed the power, to expressly declare its intent to subject the State to the provisions of its legislation. Such an intendment, if it exists, should not be left to inference nor to be conceived by the courts by means of implication and interpretation.

There is nothing in the legislative history of the Sherman Act conveying or even hinting at the slightest intent to apply the provisions of that Act to any State in the exercise of its governmental powers.

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[44] *U. S. v. Cooper Corp., supra*, U. S. p. 604, S. Ct. p. 743; *In re Fox*, 52 New York 530, 11 Am. Rep. 751; *U. S. v. Fox*, 94 U. S. 315, 321, 24 L. ed. 192; *McBride v. Pierce County Commissioners*, 44 Fed. 17, 18; *West Coast Manufacturing and Investment Co. v. West Coast Improvement Co.*, 25 Wash. 627, 66 Pac. 97, 103, 62 L. R. A. 763; *Banton v. Griswold*, 95 Maine 445, 50 Atl. 89, 90; *Onondaga County Savings Bank v. Love*, 3 N. Y. Supp. (2d) 428, 432, 166 Misc. 697; *Huffman v. State Roads Commission*, 152 Md. 560, 137 Atl. 358, 365.

On the contrary, the philosophy of the Act,[45] and the language of Mr. Chief Justice White in the *Standard Oil* case,[46] and that of the present Chief Justice in the *Apex Hosiery* case,[47] absolutely repel any such intent.

As was said in the *Apex Hosiery* case,[48] the Sherman Act "was enacted in the era of 'trusts' and of 'combinations' of businesses and of capital organized and directed to control of the market by suppression of competition in the marketing of goods and services, the monopolistic tendency of which had become a matter of public concern." We find ample support for the fact that this law was not intended to apply to States in the extensive notes accompanying the decision in the *Apex Hosiery Company* case. "Clearly the law was inspired by the predatory competitive tactics of the great trusts." (15 Ency. Soc. Sciences, 111, 113.) "Senator Sherman asserted that the bill prevented only 'business combinations'" (21 Cong. Rec. 2457). "Senator George denounced trusts which crush out competition 'and that is the great evil at which all this legislation ought to be directed.'" (*Ibid.* 3147.) It may well be said that Congress when it enacted the Sherman law never even dreamed, let alone intended, that its provisions should be applied to a State in the exercise of the latter's police power or governmental functions.

To hold the State within the prohibition of the Sherman Act in the present instance would result in prohibiting it

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[45]*Edward P. Hodges*, "Anti-Trust Act and the Supreme Court," pp. 4-6.

[46]*Standard Oil Co. v. United States*, 221 U. S. 1, 58, 31 S. Ct. 502, 515, 155 L. ed. 619 (1910).

[47]*Apex Hosiery Co. v. Leader*, 310 U. S. 469, 492-3, 497-8, 60 S. Ct. 982, 992, 994-5, 84 L. ed. 1311 (1940).

[48]U. S. pp. 492-3, S. Ct. p. 992.

from exercising its otherwise valid police powers. This Court has repeatedly and emphatically stated that "it should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the State, even when it may do so, unless its purpose to effect that result is clearly manifested."[49]

We have already mentioned that up until the present time the courts and text writers have universally considered a State to be without the prohibition of the Sherman Act and that State control was not a monopoly within that meaning.[50] This contemporaenous construction by the bench and the legal profession since the passage of the Act in 1890, supported by the long acquiescence on the part of Congress and its continued use of the same language without amendment in that respect, is strong evidence[51] that Congress never intended to subject a State to the provisions of the Sherman Act, notwithstanding that it may have intended for the State to have the benefit of such legislation.

2. Does the State Seasonal Program for Raisins Violate the Provisions of the Sherman Act?

Assuming for the sake of argument that a State is subject to the provisions of the Sherman Act, the question then remains, does the California 1940-41 Seasonal Marketing Program for Raisins violate the provisions of that Act.

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[49] *Supra*, pp. 24, 27, 38-9.

[50] *Supra*, pp. 39-42.

[51] *Matz v. Chicago etc. Railway Co.*, 85 Fed. 180; *People v. Bloom*, 85 N. E. 824, 193 N. Y. 1, 127 Am. Rep. 931; 18 L. R. A. (N. S.) 868, 15 Ann. Cases 932; *Lowman etc. Co. v. Ervin*, 157 Wash. 649, 290 Pac. 221.

The Solicitor General[30] has very clearly and accurately set forth the negotiations between the Federal and State governments in connection with this Seasonal Marketing Program for Raisins and it is not necessary to repeat the same here. Briefly summarized it may be said that the institution of said seasonal program was insisted upon as a condition precedent to a Federal loan, that the program itself was not only dictated but practically prepared by the Federal officials and that the handling of the pooled raisins, especially the sale, the price, the amount, and time of delivery were exclusively in the hands of such Federal officials.

We understand that the Solicitor General takes the position that this approval and the active participation in and domination of the program by the Federal officials removes any conflict with the Agricultural Adjustment Act as amended, but leaves it in his opinion invalidated by the provisions of the Sherman Act.

The Sherman Act denounces every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations and the monopoly or attempt to monopolize any part of such interstate commerce.

It does not denounce such restraint or monopoly of *intra*state trade or commerce. It does not apply to *intra*state restraints or monopolies unless and until they actually burden or obstruct *inter*state commerce. It is only when the intent or necessary effect of such *intra*state

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[30]Brief for the United States as *Amicus Curiae*, pp. 18-20.

restraint or monopoly is to burden or obstruct *inter*state commerce that it violates the Sherman Act.[51]

We reiterate that the full extent of the State raisin program is confined wholly to a local activity in a purely intrastate field. Absolutely no intent appears to burden or obstruct interstate commerce. On the contrary the provisions of the program are exactly in line with the policies which Congress has declared are essential to protect interstate commerce. Preparation of and participation in that program by the Federal officials selected by Congress to administer that policy should effectually remove any thought of obstruction to or injurious effect upon interstate commerce.

It has been argued that because most of the finished raisin product moves in interstate commerce Federal control thereby extends to the production of the raw raisins and intrastate transactions therein. We know of no authority, and none has been cited, that holds that because the bulk, or even all, of a commodity moves in interstate commerce that the production, manufacture and all other ordinarily *intra*state activities in that commodity are thereby *ipso facto* transformed into *inter*state transactions and placed under the exclusive control of the Federal commerce power.

We have conceded that Congress may *invade* that *intra*state field, otherwise subject to State control exclusively. But it may do so only for the purpose of protecting, and

[51] *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, 408-9, 42 S. Ct. 570, 582, 66 L. ed. 975; 2nd Case, 268 U. S. 295, 310, 45 S. Ct. 551, 556, 69 L. ed. 970; *United Leather Workers v. Herkert*, 265 U. S. 457, 471, 44 S. Ct. 623, 68 L. ed. 1104; *Industrial Ass'n v. U. S.*, 268 U. S. 64, 45 S. Ct. 403, 69 L. ed. 849.

when it becomes necessary to protect, the national commerce in that commodity, or a product thereof. That power does not depend upon the percentage of the total commodity that moves in interstate commerce.[52]

We can agree with respondent that Congress has the power to exercise control over these local activities of production, etc., when necessary to protect interstate commerce. But, we can agree that such potential power removes these local activities from State regulation *only* when Congress has actually so acted in a proper case, and even then only to the extent that the State regulation directly conflicts with the Federal action.

That such potential Federal power over *intra*state transactions immediately transforms them into *inter*state transactions and excludes them from State authority is, we think, the fallacious premise upon which most of respondent's argument rests.

The fallacy of such premise appears from one of the latest decisions[53] of this Court involving the National Labor Relations Act and the Wisconsin Employment Peace Act. A labor dispute had arisen which was admittedly subject to the Federal Act, but the Federal Board had not taken any action nor attempted to exercise any jurisdiction. The State Board, however, assumed jurisdiction under the State Act and made an order. The Wisconsin Supreme Court upheld the order of its State

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[52] *Santa Cruz Packing Co., supra, U. S.*, 467, S. Ct. 661; "The exercise of Congressional power under the Sherman Act * * * has never been thought to be constitutionally restricted because in any particular case the volume of the commerce affected may be small.". *National Labor Relations Board v. Fainblatt*, 306 U. S. 601, 606, 59 S. Ct. 668, 671-2, 83 L. ed. 1014.

[53] *Allen-Bradley Local 1111 v. Wisconsin etc. Board, supra.*

Board saying that "there can be no conflict between the acts until they are applied to the same labor dispute." This Court in affirming the Wisconsin court said: "We cannot say that the mere enactment of the National Labor Relations Act without more excluded state regulation of the type which Wisconsin has exercised in this case."

This same case also emphasized the distinction we have attempted to make in the instant case between regulation in a "traditionally local matter," such as we have here, and in matters of international relations or national commerce, such as quarantine laws and railroad rates. In this latter field the implication that any federal action conflicts with and supersedes state regulation is much greater.

Another distinction to be drawn in cases such as this which do not involve interstate commerce intrinsically, but may become subject to the federal regulatory power in the protection of such commerce, is that, even where the restraint or monopoly complained of does obstruct or restrain such commerce, there is no violation of the Sherman Act unless such obstruction or restraint is actually intended or unless the restraint or burden is so direct and substantial that the intent must be inferred. (*United Mine Workers v. Coronado Coal Co., supra*, U. S. 410-11, S. Ct. 583.)

The record is utterly deplete of any showing of obstruction or restraint of interstate commerce by means of the State seasonal raisin program. The Act, itself, provides for trade stimulation efforts to increase consumer outlets. [Sec. 19.1(e), Appendix A.] Since admittedly from 90% to 95% of the finished raisin product (approximately 75% of the raw raisin crop) must find consumer outlets beyond the State's borders, reason would have to

be thrown to the wind to impute to the State any intent to burden or obstruct that interstate market.

Putting aside for the moment the fact that the State raisin program confines itself wholly to an *intra*state matter, and the fact that it did not in reality burden or obstruct interstate commerce, and the fact that no intent was shown and no intent could possibly be inferred to cast any burden or restraint upon interstate commerce, there remains the further necessity of showing it to be an *unreasonable* restraint before it can be held to be in violation of the Sherman Act.

(a) The Sherman Act Is Circumscribed by the Rule of Reason.

The "rule of reason"[54] is now established beyond successful controversy.[55] Applying this rule in *U. S. v. American Tobacco Co., supra*, U. S. pp. 178-9, S. Ct. p. 648, the Court said that the Sherman Act "only embraced acts or contracts or agreements or combinations which operated to the prejudice of the public interests by *unduly* restricting competition, or *unduly* obstructing the due course of trade, or which, * * * injuriously restrained trade, * * *." (Emphasis added.)

Stated in another manner only such contracts and combinations are within this chapter as by reason of intent or the inherent nature of the contemplated acts, *prejudice*

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[54]See Hodges *"The Anti-Trust Act and the Supreme Court,"* pp. 7-16, for historical background and development.

[55]*Standard Oil Company v. U. S.*, 221 U. S. 1, 49-62, 31 S. Ct. 502, 513, 55 L. ed. 619; *U. S. v. American Tobacco Co.*, 221 U. S. 106, 179-180, 31 S. Ct. 632, 648-650, 55 L. ed. 663; *Nash v. U. S.*, 229 U. S. 373, 33 S. Ct. 780, 57 L. ed. 1232; *Sugar Institute v. U. S.*, 297 U. S. 553, 56 S. Ct. 629, 80 L. ed. 859; *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 60 S. Ct. 982, 84 L. ed. 1311.

the *public interests* by *unduly* restricting competition or *unduly* obstructing the course of trade.[56]

It has been said that this "is merely another way of saying that the public rights must be violated before an offense is committed." (*Lynch v. Magnavox Co.* (C. C. A. Cal.), 94 Fed. (2d) 883.)

To hold that a program instituted by a sovereign state is a valid and reasonable exercise of its police power in preserving and protecting the public welfare in time of stress and that such program is at the same time so prejudicial to the public interests and so violative of those public rights as to subject that program to the inhibition of the Sherman Act as an unreasonable restraint is indeed paradoxical. Such a result cannot be squared with the oft quoted statement of former Mr. Chief Justice Hughes in the *Appalachian Coal* case[57] and with that of text writ-

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[56] *Nash, v. U. S., supra*, U. S. p. 376, S. Ct. 281; *Appalachian Coals v. U. S.*, 288 U. S. 344, 360, 53 S. Ct. 471, 474, 77 L. ed. 825; *Apex Hosiery Co. v. Leader, supra*, U. S. p. 469, S. Ct. p. 982

[57] *Appalachian Coal v. United States*, 288 U. S. 344, 359-60, 53 S. Ct. 471, 474, 77 L. Ed. 825.

"The purpose of the Sherman Anti-Trust Act is to prevent undue restraints of interstate commerce, to maintain its appropriate freedom in the public interest, to afford protection from the subversive or coercive influences of monopolistic endeavor.

The restrictions the act imposes are not mechanical or artificial. Its general phrases, interpreted to attain its fundamental objects, set up the essential standard of reasonableness. They call for vigilance in the detection and frustration of all efforts unduly to restrain the free course of interstate commerce, but they do not seek to establish a mere delusive liberty either by making impossible the normal and fair expansion of that commerce or the adoption of reasonable measures to protect it from injurious destructive practices and to promote competition upon a sound basis. The decisions establish, . . . 'that only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade.'"

ers stressing the fact that contracts, combinations, or monopolies must actually prejudice the public interests before they can be said to come under the scope of the Sherman Act.

Toulmin, in his work on "Trade Agreements and the Anti-Trust Laws," at pages 100-101, in speaking of the "Rule of Reason," said,

> "that rule was that you could not hold a combination illegal just because it restrained trade, because all combinations to a greater or less degree would do that. The real test was an economic one of whether the service rendered by the combination was greater or less than the disservice. If greater, then it was not an unreasonable restraint of trade because the balance in favor of the public was favorable." (*Buckeye Powder Company v. DuPont*, 248 U. S. 55, 39 S. Ct. 38, 57 L. Ed. 243; *United States v. United States Steel Corporation*, 251 U. S. 417, 40 S. Ct. 293, 64 L. Ed. 343; *United States v. United Shoe Machinery Company*, 247 U. S. 32, 38 S. Ct. 473, 62 L. Ed. 968.)

This Court in the *Nebbia* case[58] after remarking that "lawmaking bodies have in the past endeavored to promote free competition by laws aimed at trusts and monopolies" went on to thoroughly establish that:

> "* * * Where the public interest was deemed to require the fixing of minimum prices, that expedient has been sustained. If the lawmaking body within its sphere of government concludes that the conditions or practices in an industry make unre-

[58] *Nebbia v. New York*, 291 U. S. 502, 538, 54 S. Ct. 505, 516, 78 L. ed. 940 (1933).

stricted competition an inadequate safeguard of the consumer's interests, produce waste harmful to the public, threaten ultimately to cut off the supply of a commodity needed by the public, or portend the destruction of the industry itself, appropriate statutes passed in an honest effort to correct the threatened consequences may not be set aside because the regulation adopted fixes prices reasonably deemed by the Legislature to be fair to those engaged in the industry and to the consuming public."

We cannot close our eyes to the fact that the economic policy of government has undergone a decided change since the time when the Sherman Act was adopted. Absolute protection of competition, no matter to what extremes it was carried, is no longer the goal to be achieved. Cut-throat competition is an evil to be guarded against today. One of the hot beds of this evil lies in agriculture, where growers are forced to dump their crops on the market in a comparatively limited time and especially on a surfeited market. Competition between the growers in such instances almost inevitably results in ruinously depressed prices. This development of modern civilization has not served to outmode the Sherman Act. It still stands as a notable landmark of legislation, but its effectiveness is maintained through the "rule of reason". What might have been an unreasonable restraint in violation of the Act fifty years ago, today could well be held reasonable and not subject to the inhibition of the law.

Only recently, however, it was held that the elimination of so-called competitive evils is no legal justification for buying programs or price fixing agreements by *private* individuals. "For as we have seen price-fixing

combinations which lack Congressional sanction are illegal *per se*; they are not evaluated in terms of their purpose, aim or effect in the elimination of so-called competitive evils. Only in the event that they were, would such consideration have been relevant."[59]

It is argued that this definitely marks the State Seasonal Raisin Program as illegal. We do not think this follows either legally or logically. In the first place the statute denounces "contracts", "combinations" and "conspiracies". These were all present in the *Socony-Vacuum* case, but the State Seasonal Raisin Program is neither a "contract", "combination" nor "conspiracy".

Fixing a price at which to sell one's own property is not unlawful. Only when this is done by means of contract, combination or conspiracy with some one else does the Sherman Act condemn it. The State program might well be distinguished from the *Socony-Vacuum* case on this ground.

Again, a price fixed by a State in the exercise of its police powers for the common good and to protect the public welfare must necessarily be viewed in a far different light than a combination of a few private individuals without the safeguards of governmental control and supervision.

The Solicitor General concedes that "the standard applicable to state action thus differs from that governing private conduct."[60] He admits that "a state conservation

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[59]*U. S. v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 228, 60 S. Ct. 811, 846, 84 L. ed. 1129 [1940].

[60]Brief for the U. S., p. 64.

law clearly would not be deemed to violate the policy of the Sherman Act," but asserts that a private agreement for the same purpose "would be unlawful."[61]

This differentiation between governmental and private price fixing definitely appears in the field of public utilities (*Pennsylvania Gas Co. v. Public Service Comm.*, 252 U. S. 23, 40 S. Ct. 279, 64 L. ed. 434), and in the case of milk (*Milk Control Board v. Eisenberg Farm Products Co.*,[62] *supra*), although unquestionably such fixing of prices by private agreement or combination for even a small amount of interstate commerce would violate the Sherman Act. In these instances the price fixing applied directly to sales made in interstate commerce and not, as here, to intrastate sales of a raw product with only a conjectured consequent effect upon the finished or processed commodity in interstate commerce.

These cases do clearly show that the *Socony-Vacuum* ruling is not applicable to government price fixing, either because a State is not subject to the Sherman Act, or be-

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[61] *Ibid.*

[62] *Milk Control Board v. Eisenberg Farm Products*, 306 U. S. 346, 59 S. Ct. 528, 83 L. ed. 752 [1939]. There, the Pennsylvania statute fixed a minimum price which must be paid by dealers to producers for fluid milk and required the latter to procure a state license and furnish a bond. A New York milk dealer purchased milk in Pennsylvania from the producers and within less than twenty-four hours the milk was shipped directly to New York. It was not processed and no change occurred in its constituent elements. There you have full state control of the entire milk supply, fixing of the price, and subjecting a direct sale of the milk in interstate commerce to such price regulation, as well as to a license and bond provision. As against that in the instant case, we have state control over the entire product and price control over 70% of the same, but such regulation applies only to the handling of the raw product in intrastate transactions. There, the court upheld the state regulation over the transaction in question.

cause State regulation is not a contract, combination, or conspiracy within the meaning of the law; or because the differentiation in the consideration of private as against governmental price fixing makes the former "unreasonable" and the latter "reasonable."

The Solicitor General agrees that Congress plainly did not regard State price-fixing laws as incompatible with the Sherman Act, although directly applicable to interstate sales. But he takes the position that the State raisin program is an exception because it "controls the supply and price of raisins throughout the nation."[83] Such program, he asserts, "is irreconcilable with the very essence of the Sherman Act, the preservation of commercial competition in interstate industries."[84]

To support his stand his assertion, however, must be read: "the preservation of commercial competition" (at all costs or hazards). On the contrary, we believe it should read: "the preservation of (reasonable) commercial competition."

Admittedly such competition must be in interstate commerce. Despite the record in this case and the fact that the State raisin program is made to apply only to the raw raisin product before it is processed and enters interstate commerce, the Solicitor General assumes the complete control of the interstate movement in the finished raisin because of the control of the raw raisins.

Of course the possibility of such material effect upon or complete control of the interstate raisin market might

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[83]Brief of U. S., p. 64.

[84]*Ibid* pp. 64-5.

have existed under certain conditions. But the record shows that it did not occur. And the program having terminated we know that such a possibility cannot materialize. Moreover, as this Court said in *Allen-Bradley Local 1111 v. Wisconsin etc., supra*, S. Ct. p. 824:

> "We deal, however, not with theoretical disputes but with concrete and specific issues raised by actual cases. 'Constitutional questions are not to be dealt with abstractly.' They will not be anticipated but will be dealt with only as they are appropriately raised upon a record before us. Nor will we assume in advance that a State will so construe its law as to bring it into conflict with the federal Constitution or an act of Congress."

To this there may well be added that neither will the Court assume in advance that a State will so administer its law.

Nor are the people or the nation left without a remedy in that eventuality. If the State sought to use this program, not as a necessary protection to the grower, but as an arbitrary club to *unduly* restrain the supply or to force exorbitant prices in interstate markets the action could be enjoined as a violation of the California Agricultural Prorate Act (Sec. 10) and as an arbitrary and unreasonable exercise of the police powers and violative of the state and federal Constitutions.

(b) Federal Legislation as Exempting State Program From Anti-Trust Laws.

The Federal anti-trust law itself provides (15 U. S. C. A. Sec. 17), that:

> "Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of

labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit . . . ; nor shall such organization, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."

The Agricultural Adjustment Act, as amended (7 U. S. C. A. Sec. 608b) after providing that the "Secretary of Agriculture shall have the power . . . to enter into marketing agreements with processors, producers, associations of producers, and others . . . ." provides that "the making of any such agreement shall not be held to be in violation of any of the anti-trust laws of the United States, and any such agreement shall be deemed to be lawful: . . . ." In addition it provides that "for the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under Section 605 of Title 15."

Under the first of such provisions the State program certainly was "instituted for the purposes of mutual help" and it does not have capital stock nor is it conducted for profit. If the State is to be construed as a person amenable to the Sherman Act, there is no good reason why its Department of Agriculture operating this State program should not be considered as such an "agricultural organization." Certainly it requires a considerable stretch of the imagination to believe that Congress deliberately intended to permit private parties to operate agricultural nonprofit organizations exempt from the provisions of the anti-trust laws and at the same time to deny a State the right to do the same in the exercise of its governmental powers.

Technically the action of the Secretary of Agriculture under the provisions of Section 10(i) of the Act (7 U. S. C. A. 610(i)) may not come within the expressed provisions of Section 8b of the Act as constituting entering into a market agreement, but it must be conceded that it comes squarely within the spirit of such provisions.

The Solicitor General argues that the decision in *United States v. Socony-Vacuum Oil Company, supra,* and *United States v. Borden Company,* 308 U. S. 188, 200, 60 S. Ct. 182, 189, 84 L. ed. 181, are authority to the effect that these provisions do not affect the State program here in question.

Neither of the provisions here under consideration was concerned in nor applicable to the *Socony-Vacuum* case. The most that that decision holds is that a conspiracy by private parties which is illegal *per se* does not obtain immunity from the Sherman Act because employees or officials of the government "may have known of those programs and winked at them or tacitly approved them."

In the *Borden* case there does not appear to have been any action by the Secretary of Agriculture or any express approval on his part which could possibly have been said to have constituted action under the provisions of the Agricultural Adjustment Act heretofore mentioned. The lower court held that by reason of such act the marketing of agricultural commodities included thereunder, and which included milk, were thereby entirely removed from the purview of the Sherman Act. It was in the

consideration of that decision of the lower court that this Court delineated the extent to which those sections of the Agricultural Adjustment Act, as amended, immunized contracts, combinations or conspiracies otherwise condemned by the Sherman Act. The language used is admittedly persuasive in support of the Solicitor General's stand, but we hesitate to believe that such language forecloses this Court from reaching the conclusion that the language expressed in such provisions shows an intent to exempt State action of the character here involved from the condemnation of the Sherman Act.

We cannot believe that Congress, after providing for cooperation and joint participation in such State programs, and after the Secretary of Agriculture together with other Federal officials provided for the institution of such a State program, jointly prepared and dictated its terms, supervised and participated in its administration, approved it in every respect as effectuating the Federal policy even to the extent of the written approval of the President of the United States, then intended to invalidate everything that was so done as being a violation of the Sherman Act.

At least, if such provisions do not specifically exempt the program here in question from the condemnation of the Sherman Act, in the language of Mr. Justice Frankfurter in *Georgia v. Evans, supra*, "reason balks" against holding that such program is an unreasonable restraint or monopoly and that it *unduly* restricts competition or

unduly obstructs commerce or in any manner *prejudices* the public interest.

Nothing in the Act, its history or its policy, could justify such a construction of the rule of reason. We are not here concerned with such programs, as are envisaged by counsel and by the majority of the lower court, in which the entire raisin crop might be withheld from the market for presumably exorbitant figures. It is not to be presumed that the State will so arbitrarily and unreasonably administer its laws, and such a problem can be met when and if it arises.

3. May the California Raisin Program Be Enjoined in the Present Action?

At the opening of the trial [R. 71] counsel for plaintiff stated that:

> "It is agreed, so far as the plaintiff is concerned, that the case be submitted upon the constitutionality of the program, as implementing the Prorate Act: that the act itself is not here attacked."

The case was tried upon that theory. Nowhere throughout the record, nor in the proceedings in any manner whatsoever, is any attack made upon the validity of the statute, itself, nor is the same questioned. Nowhere throughout the trial is any attack made or any evidence offered pertaining to the Sherman Act. Neither in the Findings [R. 51] nor in the Judgment [R. 61] is there any mention of the Sherman Act, nor to any part or portion of Title 15, Sections 1 to 33, U. S. C. A.

The specific reason stated in the judgment for the issuance of a permanent injunction [R. 63] "is that said program violates Article I, Section 8 of the Constitution of the United States."

Prior to the enactment of the Clayton Act in 1914 no action could be maintained for injunction under the Sherman Anti-trust Act except by the United States (*Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 41 S. Ct. 172, 65 L. Ed. 349; *General Investment Co. v. Lakeshore Railroad Co.*, 260 U. S. 261, 43 S. Ct. 106, 67 L. Ed. 244).

The right to injunction given to the United States upon mere violation of the Act was not extended, however, to private parties under the Clayton Act amendment. (15 U. S. C. A. 26.) This right to injunction extended to "persons" by the Clayton Act is given only "when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity."[65]

Admittedly the theory upon which this action was framed, tried, and decided in the lower court was that the seasonal program for raisins constituted a violation of the Federal commerce clause.

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[65] *Duplex Printing Press Co. v. Deering, supra*; *Central Transfer Co. v. Terminal Railroad Assn.*, 288 U. S. 469, 53 S. Ct. 444, 77 L. Ed. 899; *Bedford Cutstone Co. v. Journeymen Stone Cutting Assn.*, 274 U. S. 37, 47 S. Ct. 522, 71 L. Ed. 916; *Anderson v. Shipowners Assn.*, 72 U. S. 359, 47 S. Ct. 125, 71 L. Ed. 298; *Geddes v. Anaconda Copper Mining Co.*, 254 U. S. 590, 41 S. Ct. 209, 65 L. Ed. 425.

Nowhere in the record is there any allegation, evidence, or finding of any contract, combination or conspiracy in restraint of trade or commerce.

Outside of the formal allegation in Paragraph I of the amended complaint [R. 2] that the action arises under the Constitution of the United States and under Title 15, Sections 1 to 33 of the United States Code, the only allegation that can possibly bear upon the Sherman Act is found in Paragraph XII [R. 5] where it is alleged upon information and belief that some 100,000 tons of raisins had been delivered to defendant Zone under said program, and upon information and belief it is alleged that the defendants are now and intend to continue withholding said raisins from interstate commerce in restraint of trade and for the purpose of maintaining the monopoly prices.

The only allegation of irreparable damage is the bare statement of that conclusion in Paragraph VII of the complaint [R. 4] "that unless said program is quickly declared unconstitutional, plaintiff and all the growers in said Zone will be irreparably damaged by the loss of such market."

The only other mention of damages is found in Paragraph VI of the amended complaint [R. 3] where it is alleged that plaintiff contracted to sell raisins in interstate commerce, and if such program is enforced he will be unable to procure the necessary raisins to fulfill his contracts and will be subjected to liability thereby in approxi-

mately the sum of $8000.00, and will also lose an estimated profit on 2500 tons of raisins of from $5.00 to $12.00 per ton. At the trial plaintiff fell far short of proving even his meager allegations of damage. He failed to produce evidence of a single contract or sale in interstate commerce. The nearest he came to interstate commerce was when several months after he had contracted to deliver raisins intrastate to certain buyers he was authorized as the agent of some of these buyers and at their expense to deliver a portion of the raisins which they had purchased from him to shipping points for transportation out of the State.

"A bill of complaint so uncertain in aim and so meager in particulars falls short of the standard of candor and precision set up by our decisions" to warrant the equitable relief of injunction. (*Hegeman Farms Corp. v. Baldwin*, 293 U. S. 163; 170, 55 S. Ct. 7, 9, 79 L. Ed. 259; *California v. Latimer*, 306 U. S. 255, 59 S. Ct. 166, 83 L. Ed. 159) Equity will take jurisdiction to grant injunctive relief only when such intervention is essential to protect property or other rights against irreparable injuries, which cannot be adequately remedied in any other manner. (*United Fuel Gas Co. v. Railroad Commission*, 278 U. S. 300, 49 S. Ct. 150, 73 L. Ed. 390; *Johnson v. Haydel*, 278 U. S. 16, 49 S. Ct. 6, 73 L. Ed. 155; *Massachusetts State Grange v. Benton*, 272 U. S. 525, 47 S. Ct. 189, 71 L. Ed. 387.)

III.

The California Raisin Program and the Federal Commerce Clause.

This question was not included in the Court's suggestion for reargument, presumably because it had been considered in the briefs originally filed by the parties to the appeal. However, the Solicitor General has furnished us with proof sheets of his brief on behalf of the United States in which he undertakes to discuss this question and to add considerable to what appears in the original briefs of the parties hereto. We are taking the liberty of replying to this as briefly as possible and without reiterating, so far as we can avoid it, any matters appearing in our original brief.

The Solicitor General stresses matters of "local concern" as opposed to matters of "national importance" and cites *California v. Thompson*, 313 U. S. 109, 113, and *Duckworth v. Arkansas*, 314 U. S. 390, 394. Undoubtedly this is one of the criteria often used in the discussion of this question. The difficulty immediately arises in determining what subjects of regulation are of *national* importance and which are of *local* concern. He quotes from the dissenting opinion in *Di Santo v. Pennsylvania*, 273 U. S. 34, 44, to the effect that it is necessary to take into account "all the facts and circumstances, such as the nature of the regulation, its function, the character of the business involved and the actual effect on the flow of commerce." (Brief of U. S. pp. 77-8.)

The nature of the present regulation under consideration and its function are to regulate the movement of a raw

crop into the hands of the processor for the purpose of saving the grower from the disastrous consequences of unrestricted dumping of his product. There has been no actual effect on the flow of interstate commerce whatsoever. So far as the interstate flow is concerned, the record is devoid of evidence of any effect. It does affirmatively show that the packers or processors at all times had more than an abundance of raisins to meet their interstate demands. Actual shipping records bear out the fact that there was absolutely no effect upon this flow of interstate commerce. Tables 13 and 14 in Appendix B show that the consumer has not been affected at all and this apparently is the chief worry of the Solicitor General in connection with this program.

Production, mining, manufacture, and handling of raw products prior to any movement in interstate commerce are, as stated in *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board, supra*, "traditionally local matters" over which a state has always exercised its historic power; and when Congress exercises its commerce powers over such matters it constitutes an invasion by Congress of the State's local field and does not transform such functions into interstate matters. They still remain local. *National Labor Relations Board v. Jones & Laughlin Steel Co., supra; U. S. v. Darby, supra.* (Appellant's original brief, pp. 30, 31.)

The fact that any part, the bulk, or even all of a commodity ultimately moves in interstate commerce, and that such commodity was manufactured or produced with that knowledge and intent, does not render invalid State regulation attaching prior to the commencement of its actual movement in such interstate commerce, or transform the

local functions attaching to such commodity into interstate activities.[66]

The distinction drawn between matters of "local" concern and those of "national" importance are applied when dealing with regulations impinging upon interstate commerce at some point between the inception and destination of the interstate journey.

The *Duckworth* case is an apt illustration of this. That case involved the transportation of a truck load of liquor from Illinois to Mississippi through Arkansas. An Arkansas statute makes it unlawful to ship liquor into the state without a permit. This was, of course, a regulation applying directly to interstate commerce. It was in discussing this type of State regulation that the terms "local" and "national concern" were used. The Court enumerated various examples of this character of legislation by the States such as quarantine laws, transportation of diseased animals, harbor and navigable water regulations, policing of motor caravans, etc.

This in reality presents an "invasion" by the State into a strictly federal field. Such cases involve the doctrine that the commerce clause has never been deemed to exclude the states from regulating matters primarily of what is termd "local concern" with respect to which Congress has not exercised its commerce power. The actual benefits accru-

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[66]Bulk of oranges: *Sligh v. Kirkwood*, 237 U. S. 52, 35 S. Ct. 501, 59 L. ed. 835 [1915]; 95% of Lumber; *Arkadelphia Milling Co. v. St. Louis Ry. Co.*, 249 U. S. 134, 150-2, 39 S. Ct. 237, 63 L. ed. 517 [1919]; 80% anthracite coal: *Heisler v. Thomas Colliery Co.* 260 U. S. 245, 43 S. Ct. 83, 67 L. ed. 237 [1922]; 100% tobacco: *Townsend v. Yeomans*, 301 U. S. 441, 452, 57 S. Ct. 842, 847, 81 L. ed. 1210 [1937].

ing to the local community are considered to far outweigh any detriment to interstate commerce.

The State in those instances is acting on sufferance of the federal power. That presents a far different question from where the State legislates in regard to that same liquor when it is in the State prior to, or after the ending of, its interstate journey. The raisin program is an instance of the latter type. Much confusion has arisen in the failure to keep this distinction in mind when considering the commerce clause.

The Solicitor General states that in his opinion that "if anything is of national commercial importance, the supply and price level of a commodity moving in interstate commerce falls in that category" (Brief of U. S. p. 80).

If by that he means that exclusive federal power attaches to an entire commodity at all times provided any part of it moves in interstate commerce, then the states are practically eliminated from governmental functions, for in this day and age practically all commodities move in interstate commerce in varying degrees. Even if he applies it only to those commodities, the great bulk of which move in interstate commerce and are grown or produced for that purpose, he would withdraw from state jurisdiction, as said in the *Heisler* case, the fruits of California, the wheat of the West, the cotton of the South, etc. As there stated: "The reach and consequences of the contention repels its acceptance." And if we confine withdrawal of State jurisdiction to instances involving only supply and price level, we have not altered in any degree "the reach and consequences" of such contention.

He argues that because of the quantity of raisins moving interstate the burden of the regulation falls upon interstate commerce. Probably just as large a proportion of the cotton of Mississippi is shipped out of that state and a tax upon the buying and selling of that cotton falls just as heavily upon interstate commerce. However, the tax was upheld, the Court saying:

> "Ginning cotton, transporting it to Greenwood, and warehousing, buying, and compressing it there, are each, like the growing of it, steps in preparation for the sale and shipment in interstate or foreign commerce. But each step prior to the sale and shipment is a transaction local to Mississippi, a transaction in intrastate commerce". *Chassaniol v. City of Greenwood*, 291 U. S. 584, 54 S. Ct. 541, 78 L. ed. 1004 (1934).

The Solicitor General urges that because the raw raisin crop is purchased by the packers for eventual interstate shipment (not necessarily by such packers), such sale is in, or in the current of, interstate shipment (Brief of U. S. p. 84). He quotes the statement from *U. S. v. Rock Royal Co-op.*, 307 U. S. 533, 568-9, that "where commodities are bought for use beyond state lines, the sale is a part of interstate commerce." That referred to milk purchased from the farmer for shipment out of the State and immediately shipped out in that same form. It is merely an instance of the ordinary sale and shipment of an article in interstate commerce in which the sale is a part of that commerce.

That is not to be compared with the purchase by the packer of the raw raisins and then, after processing them, selling some of the finished raisin product for shipment

forthwith out of the State. The latter sale is the one that is a part of interstate commerce. That the production, delivery, and handling of the raw material going into a finished product that moved interstate thereby became a part or flow of that commerce was urged by the government in support of its position in the first of the *National Labor Relations Board* cases. The Court, however, rejected that contention and maintained the well established rule that interstate commerce, itself, actually begins and ends with the inception and completion of the interstate journey. Instead it based its ruling upon the ground that the commerce power is not confined to the interstate movement or flow of commerce but may be exerted over wholly *intra*-state matters when necessary to protect the commerce power. *National Labor Relations Board v. Jones & Laughlin Steel Co., supra.*

The Solicitor General stresses the fact that California has a practical monopoly on the production of raisins in the United States. He urges that this in itself makes it a matter of "national importance" and puts it from vine to finished product exclusively under the federal commerce power. We might reply that the interstate movement of cotton, wheat, iron ore, etc., is of far more national concern than whether a single pound of raisins ever moved interstate. If the importance of moving a commodity interstate removes it entirely from under State control then indeed the states would, as has been said by this Court, become mere geographical subdivisions of the federal government.

However, the same contention as to monopoly is fully answered in *Heisler v. Thomas Colliery Co., supra.* There, Pennsylvania had the same monopoly of anthracite coal

that California has of raisins. There, it was likewise urged that the burden of the state regulation (tax) was borne by the consumers in other states and the Governor of the state was quoted as urging the tax because of that effect. That case stands in the same relation also as to the Sherman Act that the raisin program does. The Court upheld the State Act as not being in violation of the commerce clause, but apparently no one even thought that the Sherman Act had any application.

Buck v. Kuykendall, 267 U. S. 307, and *Bradley v. Public Utilities Comm.*, 289 U. S. 92, are cited as limiting the power of states to regulate "competitive features of interstate commerce." (Brief of U. S. p. 88.) Both cases refer to denial of permits to operate motor routes in interstate commerce. The first case involved a route from Seattle, Washington, to Portland, Oregon, the second involved a route from Cleveland, Ohio, to Flint, Michigan. These cases are another instance of state regulation applied directly to interstate commerce. (*Supra*, pp. 24-6, 52.) Denial of a permit in the first case was upon the ground that the route from Seattle to Portland was already adequately served. This was a direct exercise of interstate commerce upon interstate commerce grounds. This as the Court said was direct obstruction of interstate commerce. In the second case the permit was denied upon the ground that the particular route designated was already so congested that to add more traffic was a hazard and dangerous to travel. This was sustained upon the ground that safety to travel was more important than abstract interference

with interstate commerce. In fact interstate commerce was protected rather than obstructed by the denial of the permit.

The raisin program, however, did not deal with interstate commerce. It did not prevent competition in interstate commerce. The packers, jobbers, wholesalers, dealers, and all others engaged in interstate commerce in raisins were in precisely the same competitive condition as before and after the operation of the program.

The concern of the Solicitor General is not over any *actual* effect upon interstate commerce, for the 1940-41 Seasonal Marketing Program for Raisins has come and gone and not the slightest effect upon interstate commerce has been shown or can be shown, unless elimination of inferior raisins has created a better feeling among consumers and a consequent increase in demand because of confidence in obtaining a better article. This may have occurred. We do not know whether the program was in force long enough to have this effect or not. Experience proves that such effect will follow in the long run.

His concern is not even over the possibilities of the 1940-41 program for it was definitely limited to 70% of pooled raisins. And prices were definitely in the hands of the Federal officials. He stresses the effect of a hypothetical program embracing 100% of the raisins and forcing the rest of the Nation to its knees to pay tribute to California producers in the form of exorbitant prices.

It is not to be assumed that any State will so abuse its sovereign powers. Should such occasion ever arise it will be adequately dealt with. It would be an unlawful, arbitrary and unreasonable exercise of the police powers. And any such vicious and actual obstruction of interstate commerce would indeed be in violation of the commerce clause.

But this case does not present any such situation. It presents a regulation worked out in co-operation between federal and state authorities, having the express approval of high officials of the State and Nation, jointly administered by those officials, and carrying out an economic policy decreed by both the state and national governments.

It has had no actual effect upon interstate commerce, either directly or indirectly. It has been the means of affording relief and a degree of protection to a local industry within the State. It has been the means of affording at least a living return to the raisin growers of the State and doing so without increasing the burden upon any consumers elsewhere.

All this is now sought to be annulled and invalidated upon the grounds of a fanciful threat to interstate commerce by a packer handling less than 1% of the raisins, claiming to be engaged in interstate commerce, but, when challenged, failing to produce tangible evidence of a single interstate transaction; and with absolutely nothing to show any irreparable damage. He sold short in the summer before the 1940 raisin crop matured and if the raisin program served to steady the market for the grower then he lost a few dollars in fulfilling his *intra*state contracts.

Conclusion.

In accordance with what we have said we believe that the California 1940-41 Seasonal Marketing Program for Raisins was not in conflict with the Agricultural Adjustment Act, as amended, nor with the Sherman Act; nor was it invalid under the federal commerce power; and that the judgment of the lower court enjoining its enforcement as being violative of such commerce clause should be reversed.

Respectfully submitted,

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STATE OF CALIFORNIA

DEPARTMENT OF AGRICULTURE

SACRAMENTO

AGRICULTURAL PRORATE ACT

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AGRICULTURAL PRORATE ACT*

An act to conserve the agricultural wealth of the State of California, and to prevent economic waste in the marketing of agricultural products or crops produced in the State of California, creating an Agricultural Prorate Advisory Commission; providing for the appointment of members of said commission, fixing the term of office of the members of said commission; prescribing the powers, duties and authority of the Director of Agriculture under this act and of said commission and the members thereof; providing for the institution of proration programs with respect to agricultural products or crops; providing for the enforcement of such programs; providing penalties for violation of such programs; providing for the creation of funds for the purposes of said act and providing for the collection thereof; and making an appropriation therefor. Title

(Title amended by Ch. 894, Stats. 1939.)

(* The original act is Chapter 754, Statutes of 1933, approved June 5, 1933. It was amended by Chapter 471, Statutes of 1935, approved July 15, 1935, and Chapter 743, Statutes of 1935, approved July 20, 1935. It was further amended by Chapter 6, Extra Session 1938, approved March 29, 1938. Also amended by Chaps. 894, 363, and 548, Stats. 1939 and by Chaps. 603, 1150 and 1186, Stats. 1941.)

The people of the State of California do enact as follows:

SECTION 1. The unreasonable waste of agricultural wealth occasioned by the harvesting, preparation for market and delivery to market of greater quantities of agricultural commodities than are reasonably necessary to supply the demands of the market is opposed to the public interest and the difficulty inherent in any attempt by individuals to correlate within a reasonable degree the supply of any agricultural commodity to current consumptive demands is creating chaotic economic conditions in certain agricultural areas of the State of such severity as to imperil the ability of agricultural producers to contribute in appropriate amounts to the support of ordinary governmental and educational functions, thus tending to increase and increasing the tax burdens of other citizens for the same purposes. In the interest of the public welfare and general prosperity of the State, the unnecessary and unreasonable waste of agricultural wealth, hereinafter referred to as "agricultural waste," involved in the harvesting or preparation for and delivery to market of agricultural commodities for which there exists only a limited consumer demand should be eliminated while at the same time preserving to all agricultural producers an equality of opportunity in the available markets. Preamble and purposes

(Amended by Ch. 471, Stats. 1935.)

SEC. 2. As used in this act: Definitions

(a) The term "person" includes any individual, firm, association or corporation.

(b) The term "agricultural waste," in addition to its ordinary meaning, shall include economic waste, and waste incident to the harvesting and/or preparation for any delivery to market of agricultural commodities in excess of reasonable market demands.

(c) The terms "product," "crop" or "commodity" mean any horticultural, viticultural, or vegetable product of the soil, live stock and live stock products and poultry and poultry products, but shall not include milk or milk products.

(d) The terms "proration zone" or "zone" mean any district or districts with respect to which a program of market proration is proposed to be or has been instituted.

(e) The term "commission" means the Agricultural Prorate Advisory Commission unless otherwise indicated by the context.

(f) The term "producer" means any person engaged in the business of growing or producing any agricultural product for commercial use to the extent of at least one producing factor as hereinafter defined.

(g) The term "distributor" means any person, other than a retailer, who acquires and distributes any product at wholesale or retail.

(h) The term "retailer" means any person engaged in the business of making sales exclusively at retail.

(i) The term "handler" means any person receiving agricultural commodities from the producer for the purpose of marketing the same.

(j) The phrase "primary channel of trade" shall mean that transaction in which the producer or his cooperative marketing association loses physical possession of the commodity through the sale thereof or other disposition commercially.

(k) The term "producing factor" means the unit of one acre in commercial production, or such other unit as the commission shall specify, in the event that it finds that more than one acre or a fractional part of an acre, or some other unit of commercial production, is required to assure reasonable control of the commodity. In the case of a proration marketing program for live stock or live stock products or for poultry or poultry products, the producing factor shall be specified in the proration marketing program.

(*l*) The term "owner" means the producer in possession of agricultural commodities and legally entitled to dispose of the same for marketing purposes.

(m) The term "proration" means the uniform percentage of their total production which all producers may harvest and prepare for market and/or market during specified proration periods.

(n) The term "dealer" means any distributor or retailer.

(o) The term "processor" means any person who buys, or otherwise takes title to or possession of, farm products for

the purpose of processing or manufacturing the same or selling, reselling or redelivering the same in dried, canned, extracted, fermented, distilled, or other preserved form, and shall include (1) any person or exchange conducting such business and (2) any person or exchange buying farm products from the producer thereof for the purpose of reselling them to any person or exchange conducting such business.

(p) The term "production" means the total crop of an agricultural commodity of a producer as defined in this section.

(q) The term "director" means the Director of Agriculture of the State of California, and, unless the context otherwise requires, includes any authorized agent of the director.

(r) The singular includes the plural.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938, approved March 29, 1938, and in effect immediately; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

Advisory Commission

SEC. 3. The Agricultural Prorate Commission is hereby abolished. The Agricultural Prorate Advisory Commission, consisting of nine members is hereby created. Eight of the members shall be appointed by the Governor in the manner and for the terms hereinafter set forth. The Director of Agriculture shall be ex officio the ninth member. Six of the appointive members of said commission shall be engaged at the time of their appointment in the production of agricultural commodities as their principal occupation, but no two of these shall be appointed as representing the same commodity. One of said appointive members shall be neither a producer nor a handler of agricultural commodities but shall be appointed to represent consumers generally. One appointive member shall be an experienced commercial handler of agricultural products. The terms of office of the members except the director shall be four years and they shall hold office until the appointment and qualification of their successors, except that the terms of office of the said members first appointed shall be fixed by the Governor so that the terms shall expire as follows: Two members, January 1, 1940, two members, January 1, 1941, two members, January 1, 1942, and two members, January 1, 1943.

The members who have been serving as members of the Agricultural Prorate Commission shall serve as members of the Agricultural Prorate Advisory Commission until the appointment of all of the members of the Agricultural Prorate Advisory Commission as provided in this section. Vacancies shall be filled by appointment for the unexpired term.

All such appointments shall be by and with the consent of the Senate, but shall be valid to all intents and purposes, subject, however, to the consent of the Senate at its next regular session, and until such time, the person so appointed shall have as full and ample authority as though confirmed by the Senate. In case the Senate, during its session, fails to act or

refuses its consent to any such appointment, the Governor may, after adjournment of the Senate, appoint some other person, which appointment shall be valid to all intents and purposes, subject, however, to the consent of the Senate at its next regular session, and until such time, the person or persons so appointed shall have as full authority and power as though confirmed by the Senate.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Organization of commission

SEC. 4. Within 30 days after notice of his appointment each member shall qualify by taking the oath of office and filing the same with the Secretary of State in accordance with law. Within five days after all of said members shall have qualified, they shall organize and elect a president from among their number. The commission shall adopt the general policies as to its activities under this act and may from time to time adopt such rules and regulations as it deems necessary in connection therewith. The director, with the consent of the commission, shall appoint a secretary for the commission, which secretary shall also serve as executive assistant to the director in the administration of the provisions of this act.

The director may appoint an attorney and shall provide for such other personnel as may be necessary and shall prescribe their duties. In carrying out his duties under this act, the director is hereby authorized to utilize the facilities and personnel of the State and county departments of agriculture. The members of said commission shall receive ten dollars ($10) per day for each day they are actually engaged on official business and shall be reimbursed for their actual traveling expenses.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Office of commission

SEC. 5. The office of the commission shall be in the City of Sacramento and it may meet at such times and in such places as may be expedient and necessary for the proper performance of its duties; provided, however, said commission shall meet at least once every 90 days and the failure of any member to attend three consecutive meetings shall be just cause for his removal from said commission. No member or employee of the commission or member of the program committee or the zone agent shall unduly influence producers in their choice either for or against the institution of an agricultural prorated marketing program or for or against the termination of such a program. At all meetings of the commission a majority of the commission shall constitute a quorum.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Rules and regulations

SEC. 6. For the purpose of administering and enforcing the provisions of this act, the director is authorized to adopt such necessary rules and regulations as he may from time to time deem advisable and shall conduct any hearing, inquiry or investigation which the director has power to undertake

or hold. In the conduct of any such hearing, inquiry or investigation the director shall have power to administer oaths, and issue subpenas for the attendance of witnesses and the production of papers, books, maps, accounts, documents and testimony in any inquiry, investigation or hearing ordered or undertaken in any part of the State.

The director may conduct hearings and investigations on behalf of the commission and in that capacity shall have all of the authority granted him in the preceding paragraph.

Advisory Commission hearings

At each hearing held in accordance with the provisions of this act at least one member of the commission must be present. The superior court of the county or city and county in which any such inquiry, investigation or hearing may be held shall have power to compel the attendance of witnesses and to require the disclosure by such witnesses of all facts known to them, relative to the matters under investigation, and the production of papers, maps, books, accounts, documents and testimony as required by any subpenas issued by the director. All parties disobeying the orders or subpenas issued under the authority of the director shall be guilty of contempt and shall be certified to the superior court of the county in which said contempt occurs, which court shall punish such contempt.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Records

SEC. 7. A full and accurate record of business or acts performed or of testimony taken in pursuance of the provisions of this act shall be kept and be placed on file in the office of the director, which records shall at all times be open to any interested person.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Establishment of proration zone

SEC. 8. An agricultural prorated marketing program may be instituted for a variety or kind of agricultural commodity and may be based either upon a production zone or upon a market zone, the basis to be specified in the petition therefor.

Ten or more producers of the variety or kind of the commodity proposed to be affected may file with the commission a petition for the establishment of a proration zone and such prorated marketing program.

The commission within its discretion may decline to initiate or act upon any such petition if it determines and is satisfied that said petition has not been presented within a time reasonably in advance of the harvesting of the crop or commodity sought to be prorated so as to permit the formulation and establishment of a sound and effective program and which will effectuate the purposes of this act.

The said petition shall, among other things, contain:

(1) A description of the district or districts comprising the zone upon which the proposed marketing program is to be based.

(2) A general statement of facts showing the necessity for the institution of a prorated marketing program.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session, 1938; Ch. 894, Stats. 1939.)

Canning figs exempted

SEC. 8.1. By reason of the climatic and other conditions relating to the production and marketing of figs for canning purposes no proration program under this act shall be established for figs for canning purposes. Any such program now in existence shall be forthwith terminated and no further proceedings shall be had thereunder except proceedings relating to such termination.

(Added by Ch. 894, Stats. 1939.)

Grapes in certain counties exempted

SEC. 8.5. By reason of the climatic conditions and other factors relating to the production of grapes therein no proration program shall be applicable as to grapes in Sonoma, Napa, Mendocino, Lake, Santa Clara, Santa Cruz, Alameda, San Benito, Solano, San Luis Obispo, Contra Costa, Monterey, and Marin counties, or any of them.

The provisions of this section shall not affect the validity of the organization or existence of any proration zone or any proration program applicable to grapes except as to the counties herein named.

(Added by Ch. 363, Stats. 1939.)

Hearings upon petition for zone

SEC. 9. Upon the receipt of a petition for the establishment of a prorate program, the director, on behalf of the commission, shall hold a hearing at some central point located within the area described in said petition and proposed to be established as a proration zone.

If the director so requires, there shall be filed with the petition a good and sufficient undertaking, approved by the director to cover the probable cost of conducting the hearing and instituting the prorated marketing program.

Notice of such hearing shall be given at least ten (10) days prior thereto by publication in a newspaper of general circulation printed and published in each county affected and by posting in at least ten (10) conspicuous places in said area. If no paper is published in such area, then said notice shall be published in such paper as is published in the county or has general circulation in such area. In case the proposed proration zone includes more than one area the required notice shall be given in each area and the director shall hold hearings in each. At said hearings the director shall receive and hear the evidence offered by the petitioners in support of the petition and by any interested person in support of or in opposition thereto. All testimony at such hearings shall be under oath.

All evidence and exhibits and all facts and data used directly or indirectly by the director, or introduced at a hearing, shall within a reasonable time after being so used

or so introduced be available at the office of the commission to all interested parties.

Said hearings may be adjourned from time to time and from place to place as the circumstances may require. For the purpose of procuring additional evidence, facts, and data, petitioners or opponents shall, upon proper motion, be granted a continuation of any hearing by the director for a period not exceeding five days. A transcript of the proceedings at all such hearings shall be made by the director and shall be open to inspection by any interested party.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Economic findings by commission

SEC. 10. If from the evidence and data developed at said hearings it shall be found by the commission that the following facts actually exist:

(1) That the petition is signed in person or by authorized representatives by the required number of producers; and

(2) That the economic stability of the agricultural industry concerned is being imperiled by market conditions prevailing or liable to prevail as to the variety or kind of commodity sought to be prorated or is being imperiled by the existence or imminence of a seasonal or annual surplus; and

(3) That agricultural waste is occurring or is about to occur; and

(4) That the institution of a program of prorated marketing will conserve the agricultural wealth of the State and will prevent threatened economic waste; and

(5) That the institution of a proration program will advance the public welfare without discrimination against any producer; and

(6) That the institution and operation of a proration program will not result in unreasonable profits to the producers and that the commodity named in the petition can not be marketed at a reasonable profit to producers otherwise than by means of such a program; and

(7) That the proposed zone of proration includes all of the territory within this State reasonably necessary to carry out the purposes and attain the objectives of this act;

Then, in that event, the commission shall make written findings to that effect.

If in the case of any petition it shall appear that the inclusion of territory additional to that described in the petition is necessary to the program, the director shall postpone further proceedings until notice shall have been given to the producers within such additional territory in the manner provided for in Section 9 hereof. Thereafter said petition may be amended to include such additional territory and the director may complete said hearing in the manner hereinbefore provided.

All evidence and data developed at any hearings held pursuant to this act shall be for the consideration of the commission. The commission shall review the evidence and data developed as a result of the hearings and shall make written findings and shall grant or deny the petition in accordance with the facts so presented.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Producer lists

SEC. 11. If the commission finds in favor of the petition, the director shall require the county agricultural commissioner of each county in which any part of the proposed zone lies to prepare a list of the producers of the commodity in that part of the zone lying in his county, together with the producing factors represented by each of such producers. Each such county agricultural commissioner shall within twenty (20) days prepare such list which shall show the names and addresses of the producers and the producing factors belonging to or controlled by each producer, and upon its completion shall transmit such list to the commission and also shall thereupon post a copy of said list in his office for examination by all interested parties.

The director may require lists of producers within the proposed proration zone from distributors or handlers of the variety or kind of commodity for which a proration program is proposed and from such other source as may be deemed necessary or advisable and may correct the commissioner's list or lists therefrom after comparison.

The director shall notify all producers in each proration zone whose names appear on such lists that an agricultural prorate program is proposed for the commodity to be affected and that the producer is credited with the number of producing factors established by said lists.

Such lists or corrected lists shall be available for inspection in the office of the director to any producer directly affected by the program.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

SEC. 12. (Repealed by Chapter 894, Statutes 1939.)

SEC. 13. (Repealed by Chapter 894, Statutes 1939.)

Corrections of producer lists

SEC. 14. Any producer whose name does not appear on the proper list and any producer claiming an erroneous allotment of producing factors may make application to the agricultural commissioner to be placed on said list, or to be credited with the proper number of producing factors, as the case may be, and upon substantiating his claim, is entitled to have the error corrected. Such application must be made to the agricultural commissioner within 15 days after the lists of names herein described and provided are posted in the office of the agricultural commissioner of the county, as

provided in Section 11 thereof. In the event that any such producer shall be dissatisfied with the final action of the agricultural commissioner in that regard, he may, within ten (10) days after notice of such final action by the agricultural commissioner, appeal to the director, whose findings shall be final.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Election of program committee members

SEC. 15. After the approval of the petition by the commission, the director shall divide the proposed zone into as many districts not exceeding seven as may appear convenient or necessary, and allot to each district the number of producers therefrom who may serve upon a program committee. The director shall thereupon call a meeting of producers in each district at which the producers shall elect persons eligible to serve upon a program committee. Such election shall be by secret ballot after nomination from the floor. Not less than three eligible persons shall be elected for each producer member of the program committee allotted to the district. At such election each producer in attendance shall be entitled to one vote, and voting by proxy shall not be permitted. All eligible persons elected in each district shall be producers within said district. In the event a corporation or a partnership is a producer, it may designate a representative who may be a nominee. From the eligible lists of producers elected in such districts, the director shall, subject to the approval of the commission, select and appoint not less than five and not more than seven members to serve on the program committee. For each member the director shall appoint an alternate. Each district in the zone or area shall be entitled to at least one member and one alternate member on said committee. The director may also, if requested by the program committee and approved by the commission, appoint on said committee in addition to the producer members, not more than two handler members and corresponding alternates who are handlers of the commodity affected by the proration program in the proposed zone.

The persons so appointed by the director as the program committee shall formulate a proration marketing program which shall be submitted to the commission. The commission after a hearing or hearings on the proposed program held within the zone shall make written findings as to whether the program is reasonably calculated to carry out the objectives of this act and based upon said findings shall approve or disapprove the program, or may modify it and approve it as modified. If the producing factor is to be determined by the commission such determination shall be made and shall become a part of the program. The commission shall fix a date prior to which the program, in order to become effective, must be consented to by producers as provided in this act.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

Assent of producers

SEC. 16. If the program is approved by the commission, the director shall submit a copy of the program in full together with an explanation of the provisions of such program and the reasons therefor to each of the producers of the commodity or their duly authorized agent to be affected within the proposed zone as shown by the lists of producers compiled in accordance with the provisions of this act, accompanied by a printed, typewritten or mimeographed form upon which the producer can record his assent to the program and by a notice of the date prior to which the written assent of the producer to the program must be delivered to the office of the director at Sacramento. A nonprofit cooperative association may assent on behalf of any of its members only if authorized so to do by an instrument in writing signed by the member; provided that such authority may be revoked as to him by any such member by an instrument in writing filed with the director and with such association, which revocation shall become effective three (3) days after its receipt by the director. A copy of any written authorization of a producer to the nonprofit cooperative association of which he is a member shall be forwarded to the director by the association and likewise a copy of any revocation of such authority. No person, firm, or corporation, other than a nonprofit cooperative association, shall be permitted to consent for a number of producers in excess of thirty per cent (30%) of the producers to be affected, regardless of the manner in which the authority to consent is shown. On or after the date fixed, the director shall canvass the results and if he finds that 65 per cent or more of the producers in the proposed zone and the owners of 51 per cent or more of the producing factors have assented in writing to the proposed program, the director shall declare the program instituted. In any order instituting a proration program the zone effected shall be given some title indicative of the commodity affected.

Assent of cooperative association

Percentage required

Each such zone shall constitute a separate public corporate entity and its affairs shall be managed by a program committee appointed as herein provided.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Review of orders within 30 days

SEC. 17. Any order of the director instituting a proration program and any other order of the commission or director substantially affecting the rights of any interested party may be reviewed by any court of competent jurisdiction. Any such action must be commenced within 30 days after the effective date of the order complained of.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Term of office

SEC. 18. In the event of the institution of a marketing program in a proration zone, the committee chosen under Section 15 shall be the proration program committee. The members of said committee shall serve for two years. The marketing program may, however, fix the date upon which

the two-year term of program committee members will terminate. The members of such program committee shall be entitled to compensation at the rate of ten dollars ($10) each for each day while engaged on official business; provided, that such compensation shall not be paid for more than five days in any month unless approved by the director, and members shall be reimbursed for their necessary traveling expenses. Per diem

The director shall appoint in the same manner as the program committee was appointed an alternate for each member of the committee. It shall be the duty of such alternate to sit as a regular member of the committee in case the member for whom he is an alternate fails for any reason to attend any meeting of the committee, and he shall be compensated and reimbursed for his necessary traveling expenses in the same manner and to the same extent as a regular member when so serving. Alternate

Vacancies on the program committee occasioned by the expiration of term, death, or resignation of any member, or by removal for incompetence or inattention or neglect of duties as a member of the program committee by the director, with the approval of the commission, or by a member ceasing to qualify as a producer or handler of the commodity concerned, shall be filled in the same manner as the original appointments were made. Vacancies

The program committee shall appoint an agent, subject to the approval of the director, who shall administer the proration program under the direction of the program committee and who may be removed from office in the same manner as he was appointed. The salary or compensation of such agent shall be fixed by the program committee subject to the approval of the director. Zone agent

Such agent shall appoint such deputy agents and other assistants as may be necessary to direct the program, which appointments shall be subject to the approval of the program committee. Such agents, deputy agents and other assistants are employees of the zone and not of the State of California. No officer or employee shall receive compensation based on a percentage of volume involved in a prorate program, or in any manner that would lend encouragement to the promotion of a proration program for the purpose of increasing salaries and income. Employees

(Amended by Chs. 471 and 743, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

SEC. 18.1. The marketing program to be made effective in any proration zone shall be so formulated as to rectify as far as possible the adverse marketing conditions specified in Section 10 hereof, and to maintain market stability under the limitations of this act. Such marketing program after being in effect may be altered or modified in minor particulars from time to time by such program committee with the approval Procedure—minor amendments

of the commission; provided, that the commission may require the director to hold a hearing in the zone prior to such approval. If any alteration of modification is proposed by the program committee altering the program then in effect, by the addition of any one or more of the particulars (a), (b), (c), (d), or (e) of Section 19.1 hereof, the commission shall not approve such alteration or modification unless a public hearing is held thereon. Following the public hearing a referendum shall be conducted by sending a mail ballot to all producers or their duly authorized agent as shown on the lists of producers of the commodity affected compiled in accordance with the provisions of this act and such alteration or modification shall not become effective if 40 per cent or more of said producers vote against such proposed alteration or modification. Before approving any alteration or modification of any marketing program, the commission must find that the same is reasonably calculated to carry out the purposes and attain the objectives of this act.

Procedure major amendments

Negative referendum

(Added by Ch. 471, Stats. 1935; amended by Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

SEC. 19. Under the authority of a marketing program approved as provided in this act, a program committee shall determine the method, manner and extent of proration and the movement of the prorated commodity from harvest into a primary channel of distribution. Proration may be periodic or seasonal in character and may be based upon actual production, whether in storage or otherwise, or upon estimated production. Any estimation of production shall be subject to revision by the program committee in accordance with crop conditions. In estimating production a program committee shall give consideration, among other factors, to the normal production of the various producing units. The program committee shall be empowered:

Powers of program committee

(a) To appoint and empower subcommittees in the separated producing areas within the zone to facilitate the carrying out of the purposes of this act.

(b) To collaborate and cooperate with agencies or organizations with similar purposes, whether of this State, other States or of the United States, in the formulation and execution of a common marketing program; provided, that in proper cases the commission may require such collaboration and cooperation.

(c) To minimize an existing surplus by cooperating with the proper agencies in the enforcement of applicable existing standardization or other laws of this State, and of the United States, enacted to protect the consuming public from fraud or deception.

(d) To make contracts and agreements in the name of the zone in the furtherance of any of the powers of the program committee.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

SEC. 19.1. The program committee for the purpose of minimizing the effect of surpluses or other adverse market conditions may be empowered in any program in any one of more of the following particulars: Authorized types of regulation

(a) To establish and maintain surplus, stabilization or diversion pools. The program committee shall be authorized to receive from each producer for delivery into a surplus pool or stabilization pool the uncertificated portions of the marketable supply of the agricultural commodity covered by a marketing program and market the same by grades or sizes for the account of such producers when it can be advantageously disposed of either in its original or converted state. The program committee shall designate the quantity or the percentage of the marketable supply of such commodity that shall be placed in the stabilization pool and the quantity or the percentage of the marketable supply of such commodity that shall be placed in the surplus pool. The program committee shall be authorized to receive from each producer for delivery into a diversion pool such quantity or percentage of the production, of each producer, which fails to qualify for marketing or sale under grade, quality or size regulations established in the marketing program or under standardization laws or other laws of this State or of the United States. In operating any such stabilization, surplus or diversion pool, the program committee may fix grading, packing and servicing charges to be assessed against such commodities received into such pools and requiring such handling. The program committee shall have title to all of the commodity in each of such pools and shall handle all of such commodity received into each of such pools and account for the same to each producer who is beneficially interested therein upon a pooled basis. Pools

Grading and packing charges

(1) In the case of surplus pools, the contents of any such pool shall not be marketed in any form which would directly compete with that part of the crop which is regularly certificated or which is in a stabilization pool. However, any part of any such surplus pool may be turned over by a program committee to charitable organizations, self-help cooperatives, and similar agencies under proper safeguards to prevent any part of the commodity so disposed of from directly competing with the part of the crop marketed through the usual channels of trade.

(2) In the case of any stabilization pool, the contents thereof may be disposed of or may be marketed from time to time as the program committee deems advisable, and consistent with the maintenance of stabilized marketing conditions.

(3) In the case of any diversion pool, the contents thereof shall be disposed of for by-products or for other diversion purposes under proper safeguards to prevent any part of the commodity so disposed of from directly competing with the part of the crop marketed through the usual channels of trade. Diversion of surplus

(b) To create, establish or otherwise obtain and operate facilities for the financing, grading, packing, servicing, processing, preparing for market and disposal of such surplus in such manner as to maintain stability in the market and to dispose of such surplus or the contents of established pools and/or any of their derived products.

Equalization fund

(c) To create, maintain and disburse an equalization fund to be used for the removal of any inequalities between producers as to the total volume marketed through prorated channels resulting from errors in estimating production or surplus or for indemnifying producers whose production, in whole or in part, is diverted in green form or otherwise from normal marketing outlets or diverted to relief, by-products, or other noncompetitive purposes pursuant to a marketing program.

Volume, grade and size regulation

(d) To establish, adopt and apply methods for correlating the marketable supply of any commodity to the reasonable market demands therefor by means of volume limitation, time limitation, diversion, or by grade, quality or size regulations applicable to the total production of any commodity, or to that portion of any commodity which qualifies for marketing pursuant to standards authorized in the marketing program or standardization laws or other laws of this State, or of the United States.

Advertising or trade stimulation

(e) To broaden distribution and increase consuming outlets by appropriate educational and trade stimulation efforts of a general industry nature and not unfairly depreciative of the quality of any other food product.

The cost of the exercise of such powers as are herein granted to the program committee shall be a part of the cost of the operation of the program and shall be obtained through fees in the same manner as other costs of the program; provided, that no part of any funds raised for equalization fund purposes specified in subsection (e) of this section shall be applied to the cost of maintenance of the commission and the Department of Agriculture.

Liability of members

No member or alternate member of any program committee nor any employee thereof shall be held liable individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member or employee, except for acts of dishonesty.

Tree and vine removal

(f) For the purpose of providing for the adjustment of production of any agricultural commodity by means of tree or vine pulling, the program committee may receive applications from growers for acreage adjustment payments. The program committee shall, upon proper review and certification, make such acreage adjustment payments on an equitable basis from funds collected for such purpose on a uniform basis from all commercial growers of such agricultural commodity in this State, or from funds received from Federal, State or other agencies for such purpose.

No program of production adjustment adopted hereunder shall authorize payments for the removal of acreages of trees or vines of the species, variety or varieties specified in the program which have, during the three years immediately preceding the date of application, produced an annual yield per acre in excess of the comparably computed average yield from bearing trees or vines of the same species, variety or varieties for the State as a whole, such yields and averages to be determined by the director from statistical data compiled by State or Federal agencies or such other data as the director deems to be representative and reliable.

(Added by Ch. 471, Stats. 1935; amended by Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

Primary and secondary certificates

SEC. 20. After any marketing program has been formulated and has been approved as provided in this act, the agent for the zone shall assume the administration of the program and any subsequent modification thereof and the issuance of proration certificates thereunder. Such certificates shall be divided into primary and secondary certificates. Each producer shall be entitled to one primary certificate which may indicate the quantities of the commodity, for which the program has been instituted which the producer named in such certificate shall be entitled to harvest or otherwise prepare for market and delivery into the primary channels of trade. Said primary certificates may also indicate from time to time the number of secondary certificates theretofore issued under it. Secondary certificates shall be numbered consecutively and shall be used to control the time and volume of harvesting or other preparation for disposal. Such secondary certificates shall accompany all deliveries of the prorated commodity by producers into a primary trade channel; provided, that in the case of commodities which are normally concentrated for preparation for market, the program committee may authorize harvesting of the entire crop for the purpose of delivery to a concentration point and subsequent marketing control. Such certificates shall not be negotiable between producers except with the approval of the program committee and the director.

In the operation of any program, cooperative and other market agencies entitled to the possession of agricultural commodities for marketing purposes may be authorized in writing by the program committee to receive certificates for producers represented by them and to represent their respective producers when proration is applied to the commodity while in the possession of such agencies.

(Amended by Ch. 471, Stats. 1935; Chs. 548 and 894, Stats. 1939.)

Collection of fees

SEC. 21. The zone agent for each marketing program shall collect, either for each primary certificate or for each secondary certificate or for both such kinds of certificates issued

to producers, a reasonable and proportional fee to be fixed by the program committee, subject to the approval of the director, so calculated as to provide an amount adequate to defray the necessary expenses of instituting and carrying out such marketing program and a proper proportion of the cost of the maintenance of the commission and of the Department of Agriculture in the performance of duties required by this act. The proportion of the fees payable to the commission and to the Department of Agriculture may vary upon a seasonal basis for each program according to the estimated expense to be incurred by the director and the commission in administering such program; provided, that the amount so required shall not exceed fifteen per cent (15%) of the certificate fees collected by the zone agent specifically for administrative purposes and in addition such proportion of fees collected for any trade stimulation or sales promotion program as may be required by the commission and the director to administer such program which shall in no event exceed five per cent (5%) of the fees collected for such purpose, unless the payment of a larger proportion of such funds is approved by the program committee for such marketing program.

Proportion of fees payable to commission

Upon request of any program committee of any marketing program, the commission shall confer with said committee or its representatives prior to fixing the amount or proportion of any fees of said marketing program payable to the Department of Agriculture for maintenance of the commission and the department in the performance of the duties required by this act.

All such fees shall be deposited promptly by the zone agent in a bank or banks approved by the Director of Finance, and shall be accounted for forthwith to the Director of Agriculture. Such deposit shall be made in the name of the zone under which such funds are collected and shall be disbursed by the director, pursuant to rules and regulations prescribed by the director, and approved by the commission, only for the expenditures incurred by the program committee in carrying out the specific purposes and provisions of such marketing program, including all necessary expenses incurred in the formulation, administration and enforcement of such marketing program.

Deposit and expenditure of funds

The proportionate amount of fees payable, as determined herein, to the Department of Agriculture shall be withdrawn from such funds monthly by the director and paid into the Department of Agriculture Fund in the State Treasury and shall be used only for the support of the commission and of the Department of Agriculture in carrying out their duties as required by this act.

At the end of any marketing season as designated in each marketing program, after proper provision has been made for the payment of all necessary expenses incurred in connection therewith, any funds remaining to the credit of the program

committee shall be refunded upon a pro rata basis to all persons from whom such funds were collected; provided, that, if the program continues in effect, such refund may be deferred for a period not to exceed six months from the date of the close of the next preceding marketing season so as to permit the program committee to use such residual funds to meet operating expenses in such succeeding season until sufficient funds have been collected to enable such committee to make such refund and to defray current operating expenses. At the time such refund is made, the program committee shall file with the director a claim for such refund to growers entitled thereto; provided, however, that, if the director finds that the amounts so returnable are so small as to make impractical the computation and remitting of such pro rata refund to such persons, the director may authorize the retention of such funds to the credit of the program committee for subsequent use in carrying out such marketing program; provided further, that on or after the effective date of this act the director may authorize the transfer of any balances remaining from previous seasons to the fund available for the then current season and any balances so transferred shall be used for carrying out the marketing program in such current season or the next succeeding season.

Refunds to growers

No agent or employee of the program committee shall have or receive any funds collected pursuant to the provisions of this act until such agent or employee has filed with the director a bond in such form and in such penal sum as the director may prescribe.

(Amended by Ch. 743, Stats. 1935; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

SEC. 22. The director shall have power to establish such rules and regulations consistent with this act as may be necessary to carry out the purposes and attain the objectives thereof.

Powers of director

The exercise of the powers granted to a program committee in its administration of a proration program made effective in accordance with the provisions of this act shall be subject to the approval of the director; provided, that if the director finds that the exercise of such powers conforms with the provisions of the program and this act he shall approve such exercise.

The director through his duly authorized representatives and agents, including any zone agent in charge of a proration program, shall have access, solely for the purposes of investigating possible violations of any program, to the records of producers, dealers, distributors, public and private property transportation agencies, and handlers of a commodity as to which a proration program has been instituted, and shall have at all times free and unimpeded access to all buildings, yards, warehouses, stores and transportation facilities and other places in which any commodity under a proration program is

kept, stored, handled or transported. All information obtained shall be confidential and shall not be disclosed except when required in a judicial proceeding.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Act prohibited

SEC. 22.5. It shall be a misdemeanor for:

(1) Any person to wilfully render or furnish a false or fraudulent report, statement or record required under this act;

(2) Any person to deliver into a primary trade channel without proper authority any commodity upon which a proration program shall have been instituted;

(3) Any handler, dealer or carrier to receive or have in his possession, within this State, without proper authority any commodity upon which a proration program has been instituted;

(4) Any person to deliver or to attempt to deliver any commodity that has been diverted under the provisions of any proration program into any channel of trade other than that into which diversion has been ordered;

(5) Any person to aid or abet in the commission of any of the acts specified in this section, and each infraction shall constitute a separate and distinct offense.

Common carriers exempted

The provisions of this section shall not apply to a common carrier operating over a regular route or between fixed termini where such shipment is made by such common carrier in good faith and in accordance with its duties as a common carrier and where a record of every such shipment within or from this State is kept by such common carrier showing the date of shipment, character and quality of shipment, origin and destination of such shipment, and the names of the consignor and the consignee. Such record shall be open to inspection at all reasonable hours by or on the written order of the official or administrative authority charged with the enforcement of this act or any marketing program instituted thereunder.

(Added by Ch. 471, Stats. 1935; amended by Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Termination of proration program

SEC. 23. After the institution of any proration program, such proration program shall be terminated when there is filed with the commission an application for its termination signed by not less than 40 per cent of the producers and by the owners of 40 per cent of the producing factors of the industry within the zone in which the program is effective. The signatures of the producers and owners upon the application shall be those of the producers and owners whose names appear on the list or lists provided for in Section 11 or on any corrected list which the commission shall have had prepared during the existence of the program, or their successors in interest. Each petitioner shall upon affixing his signature thereto write in the date of signing, and no signature to such petition shall be

valid for any purpose if affixed thereto more than six months prior to the filing of such application with the commission. Such petition shall be accompanied by a good and sufficient undertaking in an amount equal to the probable cost of conducting said hearing. A hearing must be held upon the petition to determine the sufficiency of the signatures thereto, which hearing must be held within 30 days after the presentation of the petition. If upon such hearing, it shall be established that the petition to terminate is signed by said required 40 per cent of such producers and by the owners of 40 per cent of the producing factors, the commission shall thereupon terminate the program; provided, that any program on a seasonal crop shall not be terminated except at the end of its marketing season.

In such case the cost of conducting such hearing shall be paid from the funds of the program to the extent that they are available and thereafter from the undertaking. In the event the petition be found insufficiently signed, the entire cost of conducting such hearing shall be paid from the undertaking. In the event of the termination of a program, any funds remaining for the use of the program committee not otherwise disposed of by the provisions of this act shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

The director, on behalf of the commission, may at any time initiate an investigation to determine whether or not the facts specified in Section 10 hereof continue to exist. Upon a finding that any one or more of the prerequisite facts no longer exist, the commission shall terminate or suspend said program. In no case shall any program on a seasonal crop be terminated or suspended except at the end of its marketing season.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939; Chs. 603 and 1186, Stats. 1941.)

Injunction proceedings

SEC. 24. Any person who shall possess, market, handle or transport any commodity in violation of any provision of an original or modified proration program approved and made effective or in violation of any rule or regulation adopted by any program committee and approved by the director may be enjoined by the director or by the zone affected with the approval of the director in an action brought in the superior court for the county in which any of such violations is alleged to be occurring. There may be enjoined in the same proceeding any number of defendants alleged to be violating the same program although their actual violations of the program may be separate and distinct and occur in different counties. In any action for injunction brought hereunder, the procedure shall be governed by the provisions of Chapter 3, Title 7, Part 2 of the Code of Civil Procedure of the State of California.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939; Ch. 1186, Stats. 1941.)

Penalties

SEC. 25. Any person who violates any provision of a proration program approved and made effective or who violates any rule or regulation adopted by any program committee and approved by the director shall be liable civilly in an amount not to exceed a sum of five hundred dollars ($500) for each and every violation to be recovered by the director or by the zone affected in an action brought with the approval of the director in any court of competent jurisdiction. All sums recovered under this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Alteration of zone boundaries

SEC. 25.1. Any other area or areas within the State of California producing the same kind or variety of agricultural commodity as a proration zone already established under this act, and competing with such proration zone, may be annexed to such already established proration zone in the following manner:

The area shall be organized as a proration zone and a proration program formulated in the same manner as any other zone, except that the proration and marketing programs shall be identical with those of the existing zone and all rules and regulations shall apply alike to both zones. At the end of the current marketing season the two zones shall be consolidated by order of the commission and thereafter shall constitute one zone. When an additional area or areas are added to a proration zone the existing program committee of the original zone shall function until the end of the current marketing season, at which time a new committee shall be appointed to represent the entire area as provided for in Sections 15 and 18 of this act.

(Added by Ch. 471, Stats. 1935; amended by Ch. 894, Stats. 1939.)

Appropriation

SEC. 26. There is hereby appropriated out of any funds in the State Treasury not otherwise appropriated the sum of ten thousand dollars ($10,000) to be expended by the commission when, as and if necessary in the performance of the duties herein imposed upon it. Said sum shall constitute a loan to said commission and shall be repaid in 10 equal annual installments without interest.

Separation clause

SEC. 27. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. The Legislature hereby declares that it would have passed each provision of this act irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases, as provisions hereof, be declared unconstitutional.

(Added by Ch. 471, Stats. 1935.)

Transfer of powers and funds.

SEC. 28. The director and the Agricultural Prorate Advisory Commission, upon the effective date of this act, shall succeed to and are hereby vested with all the powers, duties, jurisdiction and responsibilities of the Agricultural Prorate Commission. The Agricultural Prorate Commission shall, immediately upon the effective date of this act, deliver to the director all books, records, documents and all other property of any kind in its possession. The Agricultural Prorate Commission Fund is hereby abolished. All money in said fund on the effective date of this act shall be transferred to the Department of Agriculture Fund. Any rebate or other payment payable from the Agricultural Prorate Commission Fund shall after the effective date of this act be paid from the Department of Agriculture Fund.

(Added by Ch. 894, Stats. 1939.)

Title.

SEC. 29. This act shall be known and may be cited as the Agricultural Prorate Act.

(Added by Ch. 894, Stats. 1939.)

Continuation existing program.

SEC. 30. All proration programs in effect at the effective date of this act and all zones in existence for the administration of such programs shall remain in existence and in full force and effect and shall be subject to termination, suspension and amendment in the manner in this act provided and shall be administered in accordance with the provisions hereof.

Any petition for termination filed before the effective date of this amendatory act shall not be affected by this act, but, if not finally determined, all subsequent proceedings on such petition shall be in conformity with this amendatory act.

(Added by Ch. 894, Stats. 1939.)

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APPENDIX "A"

State of California
Department of Agriculture
Sacramento

Agricultural Prorate Act

Revised to September 13, 1941

APPENDIX "B."

STATE OF CALIFORNIA
DEPARTMENT OF AGRICULTURE
SACRAMENTO, CALIFORNIA

A STATEMENT RELATING TO THE AUTHORIZATION FOR AND THE ECONOMIC EFFECTS OF THE 1940-1941 SEASONAL MARKETING PROGRAM FOR RAISINS

BUREAU OF MARKETS

September 1942

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I.

Authorization, Procedure and Economic Status of the 1940-1941 Seasonal Marketing Program for Raisins.[1]

The 1940-1941 Seasonal Marketing Program for Raisins was established pursuant to the provisions of the Marketing Program for Raisins, as Amended, issued in July 1940 and made effective in August 1940 pursuant to the provisions of the Agricultural Prorate Act of the State of California.

The Act authorized the establishment and maintenance of surplus and stabilization pools. Other features were authorized as well. The specific wording of the authorization for surplus and stabilization pools appears in paragraph (a), Section 19.1 of the Act, and reads as follows:

> "(a) To establish and maintain either surplus or stabilizing pools, or both, which pools shall be authorized to receive from each producer from time to time his uncertificated portions of the prorated commodity and market the same by grades for the account of the producer when it can be advantageously disposed of either in its original or converted state. The program committee shall designate the quantity that shall be placed in a stabilizing pool and the quantity that shall be placed in the surplus pool. In operating any such stabilizing or surplus pool, a program committee may fix grading, packing and servicing charges to be assessed against such commodities received by the pool or pools and requiring such handling. The program committee shall have title to all such pools and shall handle all commodities received

[1]Made effective and operated under the Marketing Program for Raisins, as Amended, authorized by the Agricultural Prorate Act.

by a pool and account for the same to the producers beneficially interested on a pooled basis. Each producer delivering his uncertificated tonnage to a pool shall be credited for his proportionate share of all tonnage so delivered.

"(1) In the case of surplus pools, the contents of any such pool shall not be marketed in any form which would directly compete with that part of the crop which is regularly certificated or which is in a stabilizing pool. However, any part of any such surplus pool may be turned over by a program committee to charitable organizations, self-help cooperatives, and similar agencies under proper safeguards to prevent any part of the commodity so disposed of from directly competing with the part of the crop marketed through the usual channels of trade.

"(2) In the case of any stabilizing pool, the contents thereof may be disposed of or may be marketed from time to time as the program committee deems advisable, and consistent with the maintenance of stabilized marketing conditions."

The Act gives further authorization to the Program Committee with respect to facilities for financing, packing, servicing, processing, preparation for market and disposal. Paragraph (b), Section 19.1, reads as follows:

"(b) To create, establish or otherwise obtain and operate facilities for the financing, grading, packing, servicing, processing, preparing for market and disposal of such surplus in such manner as to maintain stability in the markets and, to dispose of such surplus or the contents of established pools and/or any of their derived products."

It is to be noted that the regulations are direct on the grower and deliveries to the pool are "for the account of the producer."

In making the enabling program effective, the Director of Agriculture must follow certain safeguarding procedures commonly practiced in the application of administrative law. Testimony and evidence is received with respect to the enabling program at a formal public hearing conducted by the Director of Agriculture.[2] Following the public hearing the Director of Agriculture must determine whether the program effectuates the declared purposes of the Act. The Act specifically sets forth standards to guide the Director and the Agricultural Prorate Advisory Commission[3] in their actions. These standards are:[4]

"(1) That the petition is signed in person or by authorized representatives by the required number of producers; and

"(2) That the economic stability of the agricultural industry concerned is being imperiled by market conditions prevailing or liable to prevail as to the variety or kind of commodity sought to be prorated or is being imperiled by the existence or imminence of a seasonal or annual surplus; and

"(3) That agricultural waste is occurring or is about to occur; and

"(4) That the institution of a program of prorated marketing will conserve the agricultural wealth of the State and will prevent threatened economic waste; and

"(5) That the institution of a proration program will advance the public welfare without discrimination against any producer; and

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[2]Section 9 of the Act.

[3]An Advisory Commission appointed by the Governor of the State of California pursuant to Section 3 of the Act.

[4]Section 10 of the Act.

"(6) That the institution and operation of a proration program will not result in unreasonable profits to the producers and that the commodity named in the petition can not be marketed at a reasonable profit to producers otherwise than by means of such a program; and

"(7) That the proposed zone of proration includes all of the territory within this State reasonably necessary to carry out the purposes and attain the objectives of this act;"

If the Commission finds that the above conditions exist, the Director must submit the program in a referendum to all raisin producers of record.[5] If the required number of producers favor the program by giving written assent, the Director is authorized to make the enabling program effective.

In connection with the administration of the program, the Director of Agriculture must appoint a committee to assist in the administration of the program.[6] In the case of the Raisin Program, the industry committee consisted of seven members, commonly known as the Program Committee of Raisin Proration Zone No. 1.

The Program Committee is, among other things, empowered to collaborate and cooperate with other agencies. The specific wording with respect to this appears in paragraph (b), Section 19 of the Act, and reads as follows:

"(b) To collaborate and cooperate with agencies or organizations with similar purposes, whether of this State, other States or of the United States, in the formulation and execution of a common market-

[5] Section 16 of the Act.
[6] Section 15 of the Act.

ing program; provided, that in proper cases the commission may require such collaboration and cooperation."

All recommendations and actions of the Program Committee are subject to the approval of the Director of Agriculture.

With respect to the specific program for the 1940-41 raisin marketing season, there was an additional safeguard applied, namely, the Director of Agriculture submitted the 1940-41 seasonal program in a referendum among raisin growers. In this referendum the Director found that the 1940-41 seasonal program was favored by 72% of the raisin growers voting in said referendum and, in view of this, the Director made effective on September 7, 1940 the 1940-41 Seasonal Marketing Program, authorizing a stabilization and a surplus pool. Collaboration with the Federal Government had been arranged for by a loan authorization from the Commodity Credit Corporation, a subsidiary of the Reconstruction Finance Corporation, and an underwriting sales policy agreed to by the Agricultural Marketing Administration of the United States Department of Agriculture.

The Program Committee, in accordance with Section 1, Article III of the Marketing Program for Raisins, as Amended, made certain economic findings prior to its recommendations. These findings of the Program Committee appear in the minutes of the meeting of the Program Committee of Raisin Proration Zone No. 1 held at 10:00 o'clock A. M., August 13, 1940, and continued to subsequent days, in Room 1010 Pacific Southwest Building, Fresno, California. In this connection, attention is called to Section 5, Article III of the Marketing

Program for Raisins, as Amended, exempting the 1940 season from certain deadline dates. The findings of the Program Committee, made on August 15, cover the production of California grapes, the disposition of California grapes, packers' carryover stocks, estimated 1940 production, total probable supplies, quantity likely to be of inferior and substandard quality, estimate of supply of standard raisins, packers' required merchandising stocks a year hence, namely, September 1, 1941, probable market supply of standard quality raisins, probable domestic sales, including Canada as a part of the over-all domestic market, probable tonnage over and above market requirements, normal exports in non-wartime periods, and a historical record of the disappearance of California raisins in normal channels. The details of these facts as considered by the Program Committee appear in the following Tables, numbered 1a to 3, inclusive, relating to California raisins:

CALIFORNIA RAISINS

TABLE 1a

Disposition of California Grapes—1939

Use	Raisin Varieties	All Grapes
	Tons	Tons
Dried	980,000	988,600
Crushed	140,000	712,000
Fresh—out of state	119,000	450,800
Fresh—in the state	18,000	64,600
Canned	12,000	12,000
TOTAL	1,269,000	2,228,000

Taken from report of California Crop Reporting Service July 11, 1940.

TABLE 1b

Production of California Grapes

	1939 Tons	Estimated 1940 Tons
Wine Varieties	569,000	585,000
Raisin Varieties	1,269,000	1,232,000
Table Varieties	390,000	387,000
TOTAL All Varieties	2,228,000	2,204,000

Taken from report of California Crop Reporting Service August 12, 1940.

TABLE 2

	Tons
Packers stocks—September 1, 1940	70,000
Estimated 1940 production	190,000
Total probable supply	260,000
Inferior and Substandard	10,000
Estimate of supply of standard raisins	250,000
Packers merchandising stocks, Sept. 1, 1941	50,000
Probable market supply of standard raisins	200,000
Probable domestic sales, including Canada	140,000
Tonnage with no certain market	60,000
Normal exports[1]	70,000

[1] (No exports to be anticipated in 1940-1941.)

TABLE 3

Disappearance of Raisins in Normal Channels 1934-39

Twelve Months Beginning Sept. 1	Domestic Exclusive of Relief[1]	Exports	Total
	1,000 Tons	1,000 Tons	1,000 Tons
1934-35	143	48	191
1935-36	152	61	213
1936-37	141	59	200
1937-38	132	77	209
1938-39	128	84	212
Estimated 1939-40	127	63	190

Taken from tables prepared by Dr. S. W. Shear, College of Agriculture.

Other factual information available to the Committee and to the Director of Agriculture at the time from the College of Agriculture (later published) covered prices, production, carryover stocks, domestic disappearance, exports, consumption, relief distribution, and foreign production, summarized as follows:

[1] (Relief means distribution by Federal Government to persons on relief rolls.)

TABLE 4

Dried Raisin Prices, Production, Supplies, and Shipments, 1935-1939
(Thousands of short tons, natural or unprocessed weight, unless other unit given)

	Crop years beginning September 1					
	1939	1938	1937	1936	1935	Average 1935-1938
California:[2]						
Price, natural Thompsons						
(1) Grower to packer, cents per lb.	2.2	2.5	3.0	3.2	2.8	2.9
(2) F. O. B., packer,[1] cents per lb.	3.4	3.7	4.0	4.8	4.1	4.2
(3) Production harvested	245	294[2]	254[2]	190[2]	203	235
(4) Carryin, (unshipped), Sept. 1[3]	105	85	55	65	80	71
(5) Available supplies (3+4)	350	379	309	255	283	306
(6) Carryout (unshipped)[3]	103	105	85	55	65	77
(7) Disappearance, total (5-6)	247	274	224	200	218	229
(8) Regular trade shipments[4]	202	212	209	200	213	209
(9) Direct relief shipments[4]	45	10	15	0	0	6
(10) Diversion by programs	—[5]	52[5]	0	0	5	14
(11) Exports, including Canada	62	84	77	59	61	70
(12) Per cent shipments exported	25	31	34	30	28	31
(13) Consumption, U. S. (7-11)	185	190	147	141	157	159
(14) Regular trade shipments[4]	140	128	112	141	152	139
(15) Direct relief shipments[4]	45	10	15	0	0	6
(16) Diversion by programs	—	52	0	0	5	14
(17) Per-capita consumption, lbs.	2.8	2.9	2.3	2.2	2.5	2.5
(18) Regular trade shipments[4]	2.1	2.0	2.1	2.2	2.4	2.2
(19) Direct relief shipments[4]	0.7	0.2	0.2	0.0	0.0	0.1
Foreign:						
(20) Production, raisins	231	256	188	234	238	227
(21) Production, currants	148	147	152	147	192	159
World:						
Raisins						
(22) Production (3+20)	476	550	442	414	441	462
(23) Supply (5+20)	581	635	497	479	521	533
Raisins and currants						
(24) Production (21+22)	624	697	594	561	633	621
(25) Supply (21+23)	729	782	649	626	713	692

[1]Estimated f. o. b. packer prices on choice bulk Thompsons, based on quotations in California Fruit News.

[2]Unofficial production estimates in 1936-1938. The small currant crops included in all California data.

[3]Carryover excludes diversion pools—1935 and 1938 crops. Subtracting unshipped stocks in the hands of federal government gives packers' stocks on Sept. 1 as follows: 1938, 75000 tons; 1939, 62,000 tons.

[4]Purchases with blue stamps since Oct. 1, 1939 as indirect relief are included in shipments through regular trade channels and excluded from relief.

[5]The 52,000 tons of 1938 crop in the diversion pool are shown here as disappearing during the 1938 crop year, although they were sold both during 1938 and 1939 crop years.

Source of data: Compiled by S. W. Shear, Giannini Foundation, May 28, 1941, from official and reliable unofficial data, some of which are subject to moderate revision. College of Agriculture, Agricultural Experiment Station, University of California, Berkeley, California.

The basic economic reasons for a supply of raisins in excess of any reasonable market requirements in the 1940 season and seasons just prior to that are: (1) an extension of grape acreage because of favorable prices of raisins during the 1914-1919 period, (2) a further rapid extension of acreage because of the newly developed and highly desirable Thompson Seedless variety, (3) a shrinking of the normal export market occasioned by general nationalistic and other international economic forces which developed following World War I, (4) the long bearing life of grapevines, making rapid adjustment of supplies to market requirements impossible, and (5) the production of Thompson Seedless raisins in Australia where climatic conditions are similar to those of California.

Tonnages delivered to the Stablization and Surplus Pools, as revealed by an audit report made by the State Department of Agriculture dated February 17, 1942, are as follows:

TONNAGE OF RAISINS DELIVERED TO POOLS

Variety	Stabilization (Tons)	Surplus (Tons)	Total (Tons)
Thompsons	73,948	29,581	103,529
Muscats	3,232	1,791	5,023
Sultanas	1,113	445	1,558
TOTAL	78,293	31,817	110,110

All tonnages delivered to both pools were sold in an orderly manner either to regular commercial packers or to

the Agricultural Marketing Administration, then known as the Surplus Marketing Administration. Sales to the Agricultural Marketing Administration were for Lend-lease operations and for distribution to persons on relief rolls. Total loans from the Commodity Credit Corporation amounted to $5,372,254.10.

Total prices paid to growers from loan proceeds and sales proceeds were at the following rates per ton: Thompson Seedless, $57.03 per ton, Muscats, $59.98 per ton, Sultanas, $53.05 per ton. These prices are reasonable and in no economic sense are they unduly high. An appraisal of the reasonableness of these prices may be had by comparison with (a) production costs, (b) purchasing power parity prices as outlined by Congress, (c) wholesale prices during the period of the program as compared with wholesale prices prevailing prior to the operation of the program and those prevailing subsequent to the operation of the program, (d) retail prices during the period of the program as compared with retail prices prior to and subsequent to the period of the program.

II.

Production Costs.

To a producer of raisins, as well as to producers of other commodities, the most important financial consideration is the cost of production and its relationship to price. The planting and maintenance of grapevines, installation of irrigation facilities, and building of family homesites are predicated on the assumption of a reasonably stable return over and above costs. The raisin industry is very concentrated because of climatic and soil conditions. When market returns under these conditions fail to cover total costs, it seriously disrupts the economic status of every private and public institution in the community.

The commercial life of grapevines is a matter of many decades rather than years and short time adjustments in production are completely impractical. It is in the interest of the general welfare, therefore, to give full consideration to any stability that can be achieved through orderly marketing procedures under the police power of the State and the safeguards attendant therewith.

The legislature of the State of California recognized the existence of such circumstances and the inability of individuals to correct the problem. The statement of the legislature on this problem is set forth in Section 1 of the Prorate Act.

> "The people of the State of California do enact as follows:
>
> "Section 1. The unreasonable waste of agricultural wealth occasioned by the harvesting, preparation for market and delivery to market of greater quantities of agricultural commodities than are reasonable necessary to supply the demands of the market is opposed

to the public interest and the difficulty inherent in any attempt by individuals to correlate within a reasonable degree the supply of any agricultural commodity to current consumptive demands is creating chaotic economic conditions in certain agricultural areas of the State of such severity as to imperil the ability of agricultural producers to contribute in appropriate amounts to the support of ordinary governmental and educational functions, thus tending to increase and increasing the tax burdens of other citizens for the same purposes. In the interest of the public welfare and general prosperity of the State, the unnecessary and unreasonable waste of agricultural wealth, hereinafter referred to as 'agricultural waste,' involved in the harvesting or preparation for and delivery to market of agricultural commodities for which there exists only a limited consumer demand should be eliminated while at the same time preserving to all agricultural producers an equality of opportunity in the available markets."

In examining costs of producing raisins with a view of allowing for costs which would maintain in production a sufficient number of producers to produce a supply of raisins necessary to fulfill the normal requirements of consumers, the following yields are set forth.[1]

YIELDS (TONS PER ACRE—MATURE VINEYARDS)

	Usual	Good	Exceptional
Raisin Variety Grapes (dried tons per acre)	1.0	2.0	3.4

[1]Farm Management Crop Manual. R. L. Adams; University of California Syllabus Series No. 278, page 142.

Set forth in the three following tables, marked Table 5, Table 6, and Table 7 are costs of production for raisins up until 1941, when costs began rising.

TABLE 5

RAISIN GRAPES

Table 13. A Standard of Labor and Material and Other Costs for the Production of Raisins in the San Joaquin Valley with a yield of 2 tons of raisins per acre.

	Man labor	Horse labor	1½-ton truck	Cost per acre	Cost per ton
	Hours per acre			Dollars	
Pruning	18			5.40	
Brush disposal	4	4		1.60	
Tying	4			1.20	
Planting covercrop	1			.30	
Suckering	2			.60	
Sulfuring	1		.5	.85	
Dusting for leaf hopper	1		.5	.85	
Cultivate and furrow	11	22		5.50	
Irrigate	18			5.40	
Miscellaneous other work	4	2	1.0	2.50	
Total cultural labor	64	28	2.0	24.20	12.10
Picking 700 trays, 20# fresh, 5.7# dry	62	2		18.80	9.40
Turning and rolling	18			5.40	2.70
Boxing and hauling out	8	8		3.20	1.60
Hauling to market	2		2.0	2.80	1.40
Total labor cost	154	38	4.0	54.40	27.20
Water or power for pumping 30"				7.50	
Covercrop seed				1.20	
Sulfur 40 lbs. @ 4¢				1.60	
Cyanide or other dust for leaf hopper control				3.50	
Paper trays, 700 @ $4.00 per thousand				2.80	
Miscellaneous, twine, etc.				1.25	
Total material cost				17.85	8.93
General expense, 5% of all above costs				3.61	
County taxes, $175 value @ 2½%				4.25	
Machinery repairs				1.00	
Compensation insurance				.80	
Total cash-overhead costs				9.66	4.83
Total cash costs				81.91	40.96

			Man labor	Horse labor	1½-ton truck	Cost per acre	Cost per ton
			Hours per acre			Dollars	
Investment and investment overhead	Original cost	Average value	5% interest	Depreciation			
	Dollars per acre						
Vines and trellises	200.00	100.00	5.00	5.00			
Buildings	10.00	5.00	.25	.25			
Irrigation system	60.00	30.00	1.50	2.50			
Tillage tools	10.00	5.00	.25	.75			
Small tools and misc.	4.00	2.00	.10	.40			
Land	200.00	200.00	10.00				
Total investment	484.00	342.00					
Total depreciation				8.90		8.90	4.45
Total cash and depreciation costs						90.81	45.41
Total interest on investment			17.10			17.10	8.55
Total all costs						107.91	53.96

The above costs are computed for a well-managed raisin grape vineyard. Overhead costs and rates for horses and trucks are about as they would occur on a 40-acre farm. Labor costs are computed at the following rates per hour: man labor, $0.30; horse work, $0.10; and 1½-ton truck, $1.10.

The cost per ton, with a 2-ton yield of raisins would be about $54. If yield were 1 ton, cost would be $90 a ton. With a 1.5-ton production of raisins per acre, cost per ton would be $65.

Source: Standards of Production, Labor, Material and Other Costs for Selected Crops and Livestock Enterprises; Arthur Shultis, University of California, College of Agriculture and U. S. D. A. Cooperating.

TABLE 6

COST OF PRODUCING RAISINS (THOMPSON SEEDLESS)

Calculated on yield of 3,000 pounds of raisins per acre. Well-grown vineyard on sandy loam soil, irrigated, trellised, and free of serious weeds. 340 vines per acre planted 8 by 10 feet.

Basic rates per 9-hour day: tractor driver $3.15; teamsters $2.50; pruners and other hand labor $2.25; use of 10 hp. tractor $6.48; use of horses $0.81 each.

Cultural practices: Time of performance	Operations	Labor, equipment, and material	Rate of work per 9-hour day	Unit cost	Seasonal Cost per acre
December-January	Pruning	Men; pruning shears and saws	270 vines per M.	$2.25 per M. day	$4.50
	Brush disposal	2M 2H vine brush burner	9.0 acres	7.05 " "	0.78
	Tying	Men	180 vines per M.	2.25 " M. "	6.75
		Twine—¾ ball per acre		0.65 " ball	0.49
March	Plowing	1M 10T 2-14-in. plows	5.7 acres	10.87 " day	1.91
		1M 1H 8-in plow (3 furrows close to vines)	3.0 "	3.48 " "	1.16
	Disking	1M 10T 5-ft. double disk	12.0 "	10.94 " "	0.91
May and June	Sulfuring vines (2 times)	1M knapsack duster	9.0 "	2.25 " "	0.50
		30 pounds sulfur (total)		0.04 " lb.	1.20
May-August	Cultivating (4 times at monthly intervals)	1M 10T 10-ft. cultivator	24.3 "	10.40 " day	1.72
June	Suckering vines	1M	3.0 "	2.25 " "	0.75
	Hoeing around vines	Men	1.0 acre	2.25 " M. "	2.25
June and July	Furrowing for irrigating (2 times)	1M 10T 2-shovel furrower	24.3 acres	9.69 " "	0.80
	Irrigating (2 times)	1M	2.0 "	2.25 " "	2.25
		Water—1 acre-foot		2.00 " A. ft.	2.00
	Total preharvest cost				$27.97

Continued

TABLE 6

COST OF PRODUCING RAISINS (THOMPSON SEEDLESS)—Continued

Time of performance	Cultural practices: Operations	Labor, equipment, and material	Rate of work per 9-hour day	Unit cost	Seasonal cost per acre
September-October	Harvesting				Brpt. fwd. $27.97
	Hauling out boxes and trays	1H 2H wagon	3.0 acres	$4.50 per day	$ 1.50
	Picking (5 tons green weight)	Men	1 ton per M.	2.25 " M "	11.25
	Turning trays	5 man hours per acre		2.25 " " "	1.25
	Stacking trays	4 " " " "		2.25 " " "	1.00
	Boxing	12 " " " "		2.25 " " "	3.00
	Hauling out of vineyard	1M 2H wagon	3.5 tons	4.00 " " 1.50 " ton	1.71 2.25
	Hauling to warehouse	(By contract)			1.12
	Collecting trays	1M 2H wagon	4.0 acres	4.50 " day	
	Total harvest cost				23.08
	Upkeep of ditches (from table 25B)				2.34
	Use of equipment (pruners, lug boxes, drying trays, delivery boxes)				38.16
	Taxes				23.30
	Depreciation of vines				4.95
			Total cost per acre		$99.80
			Cost per pound		0.033

Source: Farm Management Crop Manual; compiled by R. L. Adams and L. A. Crawford, University of California, College of Agriculture, Berkeley, California

TABLE 7

COST OF PRODUCING SELECTED CROPS

Example of Cost of Producing Thompson Seedless Grapes for Raisins (2-ton yield of raisins) Mature Vineyard

Vines set 8' x 12' (454 per acre) trellised; irrigated conditions; drying ratio 4:1.

A. Labor and use of equipment

Rates: M/H at 35 cents; H/U at 71 cents; use of 10/15 tractor $0.60, including wages of driver; implement charges from table 9; 8" plow 15 cents; 5' cultivator 60 cents.

Operation	Crew and equipment	Cost per day	Days work (acres)	Cost per acre Per time	Cost per acre Total
Pruning	20 M/hrs. at 35¢				$ 7.00
Brush disposal	2M 2H brush burner	$7.72	18.0		.43
Wrapping and tying to trellises	4 M/hrs. at 35¢				1.40
Disking (2x):					
Per time	1M 10T 5' double disk	8.88	12.0	$0.74	
Total					1.48
Single plowing (2x): 2 furrows next to vines:					
Per time	1M 1H 8" plow	4.01	2.5	1.60	
Total					3.20
Disking (2x):					
Per time	1M 10T 5' double disk	8.88	12.0	0.74	
Total					1.48
Furrowing for irrigation (3x):					
Per time	1M 10T 4-row furrow	8.28	25.0	0.33	
Total					0.99
Irrigating (3x):					
Per time	4 M/hrs. at 35¢			1.40	
Total					4.20
Suckering vines	3 M/hrs. at 35¢				1.05
Cultivating (2x):					
Per time	1M 10T 5' cultivator	8.16	12.0	0.68	
Total					1.36
Hoeing (2x):					
Per time	3 M/hrs. at 35¢			1.05	
Total					2.10
Sulphuring (3x):					
Per time	1M 2H power duster	4.87	20.0	0.24	
Total					0.72
Cyaniding (2x):					
Per time	Contract job			1.00	
Total					2.00
Harvesting					
Distributing trays, boxes	2M 2H wagon	8.00	3.0		2.66
Picking	725 trays of 22 lbs. (fresh) at 1.5¢ (contract rate)				10.88
Turning trays (2x):					
Per time	2M crew: total of 2 M/hrs. at 35¢			0.70	
Total					1.40

Continued

A. Labor and use of equipment—Continued

Operation	Crew and equipment	Cost per day	Days work (acres)	Cost per acre Per time	Total
Stacking trays	2M crew: total of 3 M/hrs. at 35¢				1.05
Boxing raisins	2M crew: total of 1 M/D at $3.15				3.15
Hauling from vineyard	2M 2H wagon	8.00	4.0		2.00
Hauling to packing house	2 tons at $1.50 per ton				3.00
Clean-up work:					
Collecting and storing trays and boxes	8M 2H wagon	8.00	4.00		2.00
Total labor and use of equipment: per acre					$52.51

B. Materials

	Cost per acre
Manure 1/3 of 8 tons at $1.90 spread, applied once in 3 years	$ 5.07
Irrigation water: 1.5 acre-feet at $2.00	3.00
Twine for tying vines: 3/4 pound at 40¢	0.30
Sulphur: 45 pounds at 0.4¢	1.80
Cyanidide dust: 20 pounds at 16 1/2¢	3.30
Total materials: per acre	$13.47

C. Miscellaneous

	Charge per acre
Use of drying trays: 727; cost $116; interest $2.32; depreciation $5.80; taxes $1.00; repairs $1.00	$10.12
Use of raisin boxes: 24; cost 24; interest $0.48; depreciation $1.20; taxes $0.20; repairs $1.00.	2.88
Storage shed: cost per acre (prorated) $20; interest $0.40; depreciation $1.00; taxes $0.40; repairs $0.20	2.00
Taxes	2.75
Depreciation of vines: ($100 to establish; 40 years of productive life)	2.50
Depreciation of trellises: ($40 to erect; 10 years of productive life)	4.00
Management charge	4.69
Interest (4 per cent on 275)	11.00
Total miscellaneous: per acre	39.94
Total cost: per acre (2-ton yield)	105.92
Cost per ton	52.96
Cost per pound	2.65 cents

Source: Farm Management Crop Manual; R. L. Adams, University of California Syllabus Series 278, Pages 143 and 144

The conclusion to be drawn from these tables is that even those vineyards producing 1½ tons of dried raisins per year per acre required a price of slightly more than 3¢ per pound, or $60.00 per ton, to meet total cost of production. The usual vineyard, producing only 1 ton per acre, required a price of 4½¢ per pound, or $90.00 per ton, to meet total costs of production. A price which would maintain in production only those vineyards with better than the usual or average yields is from an economic standpoint a low price rather than an unreasonably high price.

III.

Purchasing Power Parity Prices.

Producer prices of raisins during the 1940-1941 crop season were substantially below purchasing power parity. Much Federal agricultural legislation has adopted purchasing power parity as a standard. Pertinent provisions of such legislation are:

The Agricultural Adjustment Act of May, 1933, specified in Section 2 thereof that it was the policy of Congress among other things to:

> (1) "* * * reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in case of all agricultural commodities except tobacco shall be the pre-war period, August 1909-July 1914. In the case of tobacco the base period shall be the post-war period, August 1919-July 1929." (7 U. S. C., Sec. 602(1).)

The Agricultural Marketing Agreement Act, approved June 3, 1937, reenacting, amending, and supplementing certain provisions of the Agricultural Adjustment Act of 1933, as amended, with respect to marketing agreements and orders, provides in Section 2 thereof as follows:

> "It is hereby declared to be the policy of Congress—
>
> "(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing

power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August 1909-July 1914. In the case of tobacco and potatoes, the base period shall be the post-war period, August 1919-July 1929.

"(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section." (7 U. S. C. Supp. V, Sec. 602.)

Section 8 (e) of said Act provides as follows:

"In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics

of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the post-war period, August 1919-July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture." (7 U. S. C. Supp. V, Sec. 608e.)

The following tables No. 8 through No. 11, inclusive, summarize the information available to the Department with respect to parity prices for raisins and grower prices for raisins for the period January, 1939, to July, 1942

The source of the material on parity prices is the Bureau of Agricultural Economics, United States Department of Agriculture. The source of the material on grower prices is the California Federal-State Market News Service. Grower prices for raisins are based upon those prices most frequently quoted for Thompson Seedless raisins. When trading is not in sufficient volume to be of significance, the Federal-State Market News Service has given no quotation. Quotations given represent the price paid to growers at growers' first delivery points.

TABLE 8

U. S. INDEX NUMBERS OF PRICES PAID BY FARMERS INCLUDING INTEREST AND TAXES

(1910-14 = 100)

Date	1939	1940	1941	1942
Month	Index Number	Index Number	Index Number	Index Number
(1)	(2)	(3)	(4)	(5)
Jan.	126	128	128	146
Feb.	126	128	128	147
Mar.	126	128	129	150
Apr.	126	128	129	151
May	126	128	130	152
June	126	128	132	152
July	126	127	133	152
Aug.	125	127	135	
Sept.	128	127	137	
Oct.	128	127	141	
Nov.	128	127	143	
Dec.	128	128	143	

Source: January 1939 to August 1942 issues of Midmonth Local Market Price Reports, published by Bureau of Agricultural Economics, United States Department of Agriculture

Bureau of Markets
California State Department of Agriculture
September 8, 1942

TABLE 9

CONVERSION OF U. S. INDEX NUMBERS OF PRICES PAID BY FARMERS, INCLUDING INTEREST AND TAXES

(Conversion 1910-14 = 100 to 1919-29 = 100)

Date	1939		1940		1941		1942	
Month	1910-14 base	1919-29 base	1910-14 base	1919-29 base	1910-14 base	1919-29 base	1910-14 base	1919-29 base
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Jan.	126	80.9	128	82.1	128	82.1	146	93.7
Feb.	126	80.9	128	82.1	128	82.1	147	94.3
Mar.	126	80.9	128	82.1	129	82.8	150	96.3
Apr.	126	80.9	128	82.1	129	82.8	151	96.9
May	126	80.9	128	82.1	130	83.4	152	97.6
June	126	80.9	128	82.1	132	84.7	152	97.6
July	126	80.9	127	81.5	133	85.4	152	97.6
Aug.	125	80.2	127	81.5	135	86.6		
Sept.	128	82.1	127	81.5	137	87.9		
Oct.	128	82.1	127	81.5	141	90.5		
Nov.	128	82.1	127	81.5	143	91.8		
Dec.	128	82.1	128	82.1	143	91.8		

Source: Columns 2, 4, 6, 8, from Table 8
Columns 3, 5, 7, 9, converted by following method:
1910-14 = 100; 1919-29 = 155.8
Conversion figure published by Bureau of Agricultural Economics, United States Department of Agriculture.

Bureau of Markets
California State Department of Agriculture
September 8, 1942

TABLE 10

PURCHASING POWER PARITY PRICES FOR RAISINS[1] BY MONTHS, JANUARY 1939 - JULY 1942

(1919-29 base—100)

(1919-29 average price, dollars per ton for raisins—$105.80)

Date	1939		1940		1941		1942	
Month	Index number	Parity Price Dollars per ton	Index number	Parity Price Dollars per ton	Index number	Parity Price Dollars per ton	Index number	Parity Price Dollars per ton
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Jan.	81	85.70	82	86.75	82	86.75	94	99.45
Feb.	81	85.70	82	86.75	82	86.75	94	99.45
Mar.	81	85.70	82	86.75	83	87.81	96	101.57
Apr.	81	85.70	82	86.75	83	87.81	97	102.63
May	81	85.70	82	86.75	83	87.81	98	103.68
June	81	85.70	82	86.75	85	89.93	98	103.68
July	81	85.70	81	85.70	85	89.93	98	103.68
Aug.	80	84.65	81	85.70	87	92.05		
Sept.	82	86.75	81	85.70	88	93.10		
Oct.	82	86.75	81	85.70	90	95.22		
Nov.	82	86.75	81	85.70	92	97.34		
Dec.	82	86.75	82	86.75	92	97.34		

Source: Columns 2, 4, 6, 8 from Table 9.
Columns 3, 5, 7, 9 results from multiplication of index numbers from Columns 2, 4, 6, 8 by base price of $105.80.

Base price of $105.80 published by Bureau of Agricultural Economics, United States Department of Agriculture re "Parity and Minimum Ceiling Prices for Agricultural Commodities," June 1942.

[1]Purchasing power parity prices for raisins are arrived at by multiplying the base period price of raisins ($105.80 per ton) by the monthly index of things which farmers buy.

Bureau of Markets
California State Department of Agriculture
September 8, 1942

TABLE 11

SUMMARY OF ACTUAL GROWER PRICES AND PURCHASING POWER PARITY PRICES FOR RAISINS JANUARY 1939-JULY 1942

Date		Prices to Growers	Parity Price	Difference	Percentage of Parity
Month	Year	Dollars per ton	Dollars per ton	Dollars per ton	Percent
(1)	(2)	(3)	(4)	(5)	(6)
Jan.	1939	57.50	85.70	—28.20	65.71
Feb.			85.70		
Mar.			85.70		
Apr.			85.70		
May			85.70		
June			85.70		
July			85.70		
Aug.			84.65		
Sept.		50.00	86.75	—36.75	57.63
Oct.		45.00	86.75	—41.75	51.87
Nov.		45.00	86.75	—41.75	51.87
Dec.		42.50	86.75	—44.25	48.99
Jan.	1940	42.50	86.75	—44.25	48.99
Feb.		42.50	86.75	—44.25	48.99
Mar.		42.50	86.75	—44.25	48.99
Apr.		42.50	86.75	—44.25	48.99
May		42.50	86.75	—44.25	48.99
June		43.50	86.75	—43.25	50.14
July		43.50	85.70	—42.20	50.75
Aug.		No quotation	85.70	—	—
*Sept.		55.00	85.70	—30.70	64.17
*Oct.		57.50	85.70	—28.20	67.09
*Nov.		55.00	85.70	—30.70	64.17
*Dec.		60.00	86.75	—25.70	69.16
*Jan.	1941	60.00	86.75	—26.75	69.16
*Feb.		No quotation	86.75	—	—
*Mar.		"	87.81	—	—
*Apr.		"	87.81	—	—
*May		"	87.81	—	—
*June		"	89.93	—	—
*July		75.00	89.93	—14.93	83.39
*Aug.		75.00	92.05	—17.05	81.47
Sept.		75.00	93.10	—18.10	80.55
Oct.		76.50	95.22	—18.72	80.34
Nov.		90.00	97.34	— 7.34	92.45
Dec.		92.50	97.34	— 4.84	95.02
Jan.	1942	96.50	99.45	— 2.95	97.03
Feb.		100.00	99.45	+ 0.65	100.55
Mar.			101.57		
Apr.			102.63		
May			103.68		
June			103.68		
July			103.68		

*1940-41 Marketing season or period of regulation.

Source: Column 3 from Official Market Information Bulletins of the Federal State Market News Service.
Column 4 from Table No. 10.
Column 5 equals Column 3 minus Column 4.
Column 6 is Column 3 expressed as a percent of Column 4.

Certain important conclusions can be drawn from these tables. It is clearly indicated that during the 1940 crop year the prices which growers received for their raisins at no time approached parity prices. In fact, the average grower price for raisins for the period September, 1940, through January, 1941—the period in which the program affected grower sales of raisins—was approximately 67% of parity prices for raisins, or 33% below parity prices. Based upon purchasing power parity as a standard for determining whether raisin prices during the crop year of 1940-1941 were unreasonably high, it must be concluded that actual prices to growers during the season in question were unduly low rather than unduly high.

IV.

Wholesale Prices of Raisins.

Wholesale prices of raisins at point of origin, like producer prices of raisins, increased at the time that the 1940-41 seasonal marketing program became effective. However, such prices were well within the bounds of fluctuations which were common during periods of no regulations. Wholesale prices did fluctuate during the 1940-41 season but were relatively stable as compared to prices prevailing during seasons of no regulation.

Monthly packer quotations[8] beginning with September, 1932, serve to give a comprehensive review of point of origin or f. o. b. prices. During the twelve-month period

[8] Compiled from the California Fruit News, a specialized publication considered by the trade as a reliable source of factual information.

of September, 1940, to August, 1941, inclusive, the monthly average f. o. b. California price of choice grade Thompson Seedless raisins in bulk averaged 4.43 cents per pound as compared with 3.467 cents per pound during the 1939-40 season. The increase of .96 cents, or approximately one cent per pound, was in part due to the marketing regulations and in part to other economic factors. During September-August of 1933-34, prices averaged 4.20 cents per pound, which is practically equal to the 4.43 cents per pound average of 1940-41. In the 1934-35 marketing season, prices were above the 1940-41 monthly average for eight months; in the 1935-36 season, prices were above for five months; in the 1936-37 season, prices were above for the entire twelve months; and during 1937-38, prices for two months were above the 1940-41 average. Since August, 1941, prices have consistently been well above the 4.43 cents per pound average of 1940-41.

Table 12 gives the detail by months of packers' quotations f. o. b. California just referred to.

Attention is also called to the fact that California f. o. b. prices fluctuate rather widely. Reference to Table 12 reveals that prices rose from a low of 3.125 cents per pound in September, 1932, to 4.375 cents in September, 1933, representing a rise of 40 per cent. Later prices rose from a low in May, 1934, of 4.062 cents to a high of 4.875 cents in October, 1934, or a rise of 20 per cent. Following this, prices dropped to 3.416 in August, 1935. The highest point reached during the period under discussion and prior to the 1940-41 season occurred in May of 1937,

which averaged 5.437 cents per pound and is a point 22 per cent above May of 1941. April of 1940 was the last low price point with an average of 3.25 cents per pound; April of 1941 averaged 4.295 cents or 32 per cent higher.

Following the 1940-41 season, prices advanced sharply due to substantial purchases of raisins under Lend-Lease operations and increased purchasing power in the domestic market. The 1941-42 season began with 5.375 cents per pound and advanced to 6.750 cents, or 52 per cent above the 1940-41 average.

In recent seasons, therefore, there were many months during which prices were higher than those prevailing in 1940-41 and many months during which prices were lower than those prevailing during 1940-41. Finally, prices during 1940-41 were relatively stable except for July and August, 1941, when substantial Lend-Lease sales to the Federal Government were being realized and further such sales being anticipated.

TABLE 12

AVERAGE PACKER QUOTATION, F.O.B. CALIFORNIA, BY MONTHS, FROM 1932-33 TO 1941-42

FOR CHOICE BULK NATURAL THOMPSON SEEDLESS RAISINS
QUOTATIONS IN CENTS PER POUND[1]

Month	1932-33	1933-34	1934-35	1935-36	1936-37
September	3.125	4.375	4.775	3.890	4.734
October	3.250	4.375	4.875	4.062	4.625
November	3.250	4.375	4.875	4.125	4.625
December	3.250	4.363	4.812	4.125	4.812
January	3.219	4.203	4.765	4.077	4.925
February	3.250	4.250	4.695	4.049	5.141
March	3.250	4.212	4.605	4.359	5.359
April	3.250	4.062	4.532	4.562	5.375
May	3.625	4.062	4.361	4.625	5.437
June	3.750	4.346	4.257	4.625	5.344
July	4.141	4.375	3.772	4.672	5.225
August	4.281	4.406	3.416	4.762	5.049
Average	3.470	4.284	4.453	4.320	5.054

[1]Simple average of weekly quotations
Source: California Fruit News, San Francisco, California.

TABLE 12—Continued

AVERAGE PACKER QUOTATION, F.O.B. CALIFORNIA, BY MONTHS, FROM 1932-33 TO 1941-42

FOR CHOICE BULK NATURAL THOMPSON SEEDLESS RAISINS
QUOTATIONS IN CENTS PER POUND[1]

Month	1937-38	1938-39	1939-40	1940-41	1941-42
September	4.812	3.672	4.094	4.123	5.375
October	4.550	3.687	3.765	4.234	5.500
November	4.234	3.703	3.593	4.137	5.806
December	4.031	4.012	3.400	4.247	6.203
January	3.775	4.062	3.331	4.231	6.250
February	4.015	4.091	3.329	4.185	6.305
March	4.062	4.187	3.362	4.148	6.750
April	4.062	4.187	3.250	4.295	6.705
May	3.937	4.077	3.250	4.451	6.786
June	3.937	4.037	3.435	4.546	6.750
July	3.737	3.937	3.415	5.187	6.750
August	3.672	3.984	3.375	5.375	[2]
Average	4.077	3.970	3.467	4.430	

[1]Simple average of weekly quotations
[2]No quotations
Source: California Fruit News, San Francisco, California.

V.

Retail Prices of Raisins.

Retail prices of raisins are very stable as compared to wholesale California f. o. b. prices. California f. o. b. prices were set forth in some considerable detail in the preceding section dealing with wholesale prices. Comparable retail prices over a period of time are not readily available. Such prices are not published in official Government sources. For purposes of comparability, the prices must pertain to specific markets and a specific standardized package. Such a series has been made available to the State Department of Agriculture by a large chain organization. This series is shown in Table 13 for 15-ounce size cartons of Thompson Seedless raisins at Washington, D. C., as representative of markets in the eastern part of the United States, and at San Francisco as a representative market on the Pacific Coast. A review of the tabulation reveals at once that prices are the same for many months in succession, and when changes occur, they tend to be one-half cent per pound in magnitude.

At Washington, D. C., the prevailing retail prices of 15-ounce carton-pack Sunmaid Nectars (Thompson Seedless raisins) were 7.5 cents for the 26-month period August, 1938, to September, 1940, inclusive. In October the Washington price rose to 8.0 cents and remained at that level to July, 1941, at which time it advanced to 8.5 cents. In the winter and spring months of 1942 the price advanced and was frozen at 10.0 cents per carton. Except for a decline in June of 1940, prices at San Francisco show a similar tendency.

A direct comparison of retail prices at Washington, D. C., and San Francisco, and f. o. b. California for the 1939-40 and 1940-41 seasons is shown in Table 14. At-

tention is called to the fact that the 1939-40 season was without State regulation, and that the 1940-41 season was subject to stabilizing marketing regulations.

Retail prices of Muscat raisins tend to run 1.0 cent per carton higher than Thompson Seedless raisins. Except for the one cent differential, prices of Muscats reflect the same degree of stability as retail prices of Thompson Seedless raisins. (See Table 13.)

The analysis of packers' quotations in the previous section dealing with wholesale prices, together with the direct comparisons in this section, leads to the following conclusions: (1) Packers' prices f. o. b. California tend to flutuate relatively widely; (2) California f. o. b. prices during the 1940-41 season, which is the season of control in question, were higher than in the 1939-40 season, but not higher than certain prices of other recent seasons: (3) retail prices are very stable as compared to f. o. b. prices; (4) retail prices during the 1940-41 season were not unduly enhanced.

TABLE 13

RETAIL PRICES OF RAISINS AT WASHINGTON, D. C. AND SAN FRANCISCO

Date	15-oz. Sunmaid Nectars		15-oz. Sunmaid Seeded	
	Wash. D. C.	San Francisco	Wash. D. C.	San Francisco
1938				
July	.10	.075	.10	.09
August	.075	.07	.09	.08
Sept.	.075	.07	.09	.08
Oct.	.075	.07	.09	.08
Nov.	.075	.065	.09	.08
Dec.	.075	.065	.09	.08
1939				
Jan.	.075	.065	.09	.08
Feb.	.075	.065	.09	.08
March	.075	.07	.09	.08
April	.075	.07	.09	.08
May	.075	.07	.09	.08
June	.075	.07	.09	.08
July	.075	.07	.09	.08

TABLE 13—Continued

RETAIL PRICES OF RAISINS AT WASHINGTON, D. C. AND SAN FRANCISCO

	15-oz. Sunmaid Nectars		15-oz. Sunmaid Seeded	
	Wash. D. C.	San Francisco	Wash. D. C.	San Francisco
Aug.	.075	.07	.09	.08
Sept.	.075	.07	.09	.08
Oct.	.075	.07	.09	.08
Nov. 15	.09	.07	.09	.08
Dec. 14	.075	.07	.09	.08
1940				
Jan.	.075	.07	.09	.08
Feb.	.075	.07	.09	.08
March	.075	.06	.09	.075
April	.075	.06	.09	.075
May	.075	.06	.09	.07
June	.075	.055	.085	.07
July	.075	.055	.085	.07
Aug.	.075	.055	.085	.07
Sept.	.075	.055	.085	.07
Oct.	.08	.055	.09	.07
Nov.	.08	.055	.09	.07
Dec.	.08	.055	.09	.07
1941				
Jan.	.08	.055	.09	.07
Feb.	.08	.055	.09	.07
March	.08	.06	.09	.07
April	.08	.06	.09	.07
May	.08	.06	.09	.07
June	.08	.06	.09	.07
July	.085	.06	.095	.07
Aug.	.085	.06	.095	.08
Sept.	.085	.07	.095	.08
Oct.	.085	.07	.095	.08
Nov.	.085	.075	.095	.095
Dec.	.085	.085	.095	.095
1942				
Jan.	.09	.085	.10	.095
Feb.	.09	.085	.105	.10
March	.095	.085	.11	.10
April	.11	.085	.12	.10
May	.10	.09	.11	.11
CEILING	.10	.09	.11	.10

Source of data: Safeway Stores Incorporated, Oakland, California. Letter dated September 25, 1942.

TABLE 14

CALIFORNIA F. O. B. PRICES COMPARED WITH RETAIL PRICES OF RAISINS AT SAN FRANCISCO AND WASHINGTON D. C.

Month	California f. o. b.	San Francisco Retail	Washington, D. C. Retail
(1)	(2)	(3)	(4)
	per pound	per carton	per carton
1939-40			
September	.0409	.07	.075
October	.0376	.07	.075
November 15	.0359	.07	.090[1]
December 14	.0340	.07	.075
January	.0333	.07	.075
February	.0333	.07	.075
March	.0336	.06	.075
April	.0325	.06	.075
May	.0326	.06	.075
June	.0343	.055	.075
July	.0341	.055	.075
August	.0338	.055	.075
1940-41[2]			
September	.0412	.055	.075
October	.0423	.055	.080
November	.0414	.055	.080
December	.0425	.055	.080
January	.0423	.055	.080
February	.0418	.055	.080
March	.0415	.060	.080
April	.0430	.060	.080
May	.0445	.060	.080
June	.0455	.060	.080
July	.0519	.060	.085
August	.0538	.060	.085

[1]This figure very likely represents the price of Sunmaid seeded raisins (Muscats). The price of that class of raisins was .09 during November.

[2]Season under stabilizing marketing regulations.

Source of data:

Column 2 taken from Table 12.

Columns 3 and 4 Safeway Stores Inc., Oakland, California, Letter dated September 25, 1942.

VI.

Season of 1941-1942.

At the beginning of the 1941-1942 marketing season, the Agricultural Marketing Administration of the United States Department of Agriculture indicated that Lend-Lease requirements of raisins would be heavy. The Agricultural Marketing Administration advised that grower prices of raisins would be supported at levels higher than those prevailing in 1940-1941.[1] The economic situation of the industry was therefore not such as to warrant the application of compulsory stabilization control. The "economic stability" of the industry was not "imperiled" and no program therefore was put into effect.

VII.

Summary and Conclusions.

Definite conclusions may be drawn from the foregoing analysis pertaining to the Marketing Program for Raisins, as Amended, effective and operative under the authority of the Agricultural Prorate Act of the State of California. These conclusions are:

(1) The economic stability of the raisin industry, particularly as it applied to producers, was imperiled by marketing conditions prevailing at the beginning of the 1940-41 season.

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[1]As the season advanced the Agricultural Marketing Administration gave assurance of the following rates per ton:

Muscat raisins	$75.00
Thompson Seedless raisins	75.00
Sultana raisins	70.00

(2) A 1940-41 Seasonal Marketing Program for raisins, involving stabilization and surplus pools, was authorized, developed, and made effective under the Agricultural Prorate Act of the State of California.

(3) That the Agricultural Prorate Act of the State of California sets forth specific legislative safeguards and administrative procedures in the public interest.

(4) That the Federal Government, through the Commodity Credit Corporation of the Reconstruction Finance Corporation, and the Agricultural Marketing Administration of the United States Department of Agriculture, cooperated with State Agencies in the effective operation and administration of the 1940-41 Seasonal Marketing Program for Raisins.

(5) Prices to producers were increased and tended to be stabilized under the operations of the program as compared with producer prices of the previous season.

(5) Prices to producers as increased under the program were (a) considerably below purchasing power parity prices, and (b) failed to equal total costs of production based on usual yields per acre.

(7) Packers' f. o. b. California quotations of raisins during the 1940-41 season were higher than prices of certain previous seasons and lower than certain previous seasons and lower than prices prevailing since; and that by comparison with other recent seasons, 1940-41 prices were not unduly enhanced.

(8) Retail prices of raisins are very stable for long periods of time; retail price changes tend to be less both in absolute terms and in terms of percentages than changes in packers' quotations f. o. b. California.

(9) Retail prices of raisins were not unduly enhanced, if at all, by the operations of the program as compared to retail prices that might otherwise have prevailed.

(10) The economic situation prevailing in the raisin industry at the beginning of the 1941-42 season was such as to bring into play the legislative limitations and safeguards provided in the Agricultural Prorate Act, and no compulsory marketing control program was made effective.